TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. [illegible]

[illegible] HAWLEY, DAVIS & [illegible]
[illegible] W. SPRECKELS AND [illegible]
[illegible] OF TEXAS,

vs.

[illegible] DOWNEY,

SUPREME COURT OF THE STATE OF CALIFORNIA.

[illegible] NOVEMBER 4, 1887.

SUPREME COURT OF THE UNITED STATES.

No. 318.

CYRUS PALMER, CHARLES A. HAWLEY, DAVID N. HAWLEY, W. A. PALMER, O. W. SPENCER, AND G. B. BRADFORD, PLAINTIFFS IN ERROR,

vs.

GEORGE DONNER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

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a UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Judges of the Supreme Court of the State of California, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said Supreme Court, before you, between Cyrus Palmer, Charles A. Hawley, David N. Hawley, W. A. Palmer, O. W. Spencer, and G. B. Bradford, plaintiffs in error, and George Donner, defendant in error, a manifest error hath happened, to the great damage of the said plaintiffs, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at said Supreme Court of the United States in Washington City, on the first Monday of December next, in the said Supreme Court, to be there and then held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness, the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this thirteenth day of April, A. D. 1867, and of the independence of the United States the ninety-first.

[SEAL.]

GEO. C. GORHAM,
Cl'k Sup. Co't for Dist. Cala.
Pr. JOHN O. WHEELER, *Dep.*

The above writ of error is hereby allowed.

M. P. DEADY,
Judge holding the Circuit Court for the District of California.

Endorsed: Supreme Court. Cyrus Palmer and others *vs.* Geo. Donner. Writ of error. Filed April 15, 1867.

b UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Judges of the Supreme Court of the State of California, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said Supreme Court, before you, between Cyrus Palmer, Charles A. Hawley, David N. Hawley, W. A. Palmer, O. W. Spencer, and G. B. Bradford, plaintiffs in error, and George Donner, defendant in error, a manifest error hath happened, to the great damage of the said plaintiffs, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if

judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at said Supreme Court of the United States in Washington City, on the first Monday of December next, in the said Supreme Court, to be there and then held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness, the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this thirteenth day of April, A. D. 1867, and of the independence of the United States the ninety-first.

[L. S.] GEO. C. GORHAM, *Cl'k, &c.*
Pr. JOHN O. WHEELER, *Dep'y.*

The above writ of error is hereby allowed.

M. P. DEADY,
Judge holding the Circuit Court of the District of California.

I hereby certify the within to be a true copy of its original.
GEO. C. GORHAM, *Cl'k.*
Pr. JOHN O. WHEELER, *Dep'y.*

I hereby certify the within to be a copy of a copy of the original.
WM. G. WOOD,
Cl'k Sup. Ct., Cala.

Endorsed: United States Supreme Court. Cyrus Palmer and others *vs.* Geo. Donner. Writ of error. "Copy left for defendant in error, in accordance with the statutes and rules of the Supreme Court of the United States." Geo. Turner *et al.* for petitioner and pl'ffs. Filed April 15, 1867. (Copy.)

c UNITED STATES OF AMERICA, *ss:*

To GEORGE DONNER, greeting:

You are hereby cited and admonished to be and appear at a term of the Supreme Court of the United States, to be held in Washington City on the first Monday of December, A. D. 1867, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the State of California, wherein Cyrus Palmer, Charles A. Hawley, David N. Hawley, W. A. Palmer, O. W. Spencer, and G. B. Bradford are the plaintiffs, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable M. P. Deady, Judge of the U. S. Cir't Court, this thirteenth day of April, A. D. 1867, and of the independence of the United States the ninety-first.

[SEAL.] M. P. DEADY,
Judge holding the Circuit Court for the District of California.

U. S. MARSHAL'S OFFICE,
District of California.

I hereby certify, that I received the within citation on the 15th day of April, A. D. 1867, and personally served the same on the 15th day of April, A. D. 1867, by delivering to S. O. Houghton, attorney of record of defendant in the within cause, in the city of San Francisco, a certified copy of said citation.

CHARLES W. RAND,
U. S. Marshal.
By GEO. F. WORTH, *Deputy.*

San Francisco, April 16th, 1867.

Geo. F. Worth being duly sworn, deposes and says, that he served the within by delivering a true copy thereof to S. O. Houghton, attorney of record of defendant in the within cause, in the city of San Francisco, on the 15th day of April, A. D. 1867.

GEO. F. WORTH.

Sworn and sub'd before me, this 16th Ap'l, A. D. 1867.
JOHN O. WHEELER, *U. S. Com.*

Endorsed: United States Supreme Court. Cyrus Palmer and others *vs.* Geo. Donner. Citation. Filed April 20, 1867.

d I, William G. Wood, Clerk of the Supreme Court of the State of California, do hereby certify that a bond was given on appeal, dated on the thirteenth day of April, one thousand eight hundred and sixty-seven, for three thousand dollars, by Cyrus Palmer, as principal, to George Donner, with Ira P. Rankin and H. H. Angell, as sureties, which bond was approved by M. P. Deady, Judge holding Circuit Court for the district of California.

WM. G. WOOD,
Cl'k Sup. Ct. Cal'a.

3 *Transcript on appeal.—Complaint.*

In the District Court of the twelfth judicial district in and for the city and county of San Francisco, in the State of California.

GEORGE DONNER, plaintiff,
vs.
CYRUS PALMER, CHARLES A. HAWLEY, David N. Hawley, W. A. Palmer, John Doe Spencer, and G. B. Bradford, defendants.

The above-named plaintiff, George Donner, complains of the said defendants, Cyrus Palmer, Charles A. Hawley, David N. Hawley, W. A. Palmer, John Doe Spencer, and G. B. Bradford, the true and full names of said W. A. Palmer, G. B. Bradford, and John Doe

Spencer, being unknown to said plaintiff, he asks that when the same shall be ascertained, they be substituted for the names by which they are here sued—and for cause of action avers, that on the nineteenth day of July, A. D. 1847, George Hyde was alcalde of the then pueblo and now city of San Francisco, in the State of California, and was performing and discharging the powers and duties of said office; that on said day last aforesaid, the said George Hyde, as alcalde of said pueblo, exercising the powers conferred on him by law, granted and conveyed to said plaintiff as owner in fee,
4 all that certain lot or parcel of land lying in the city and county of San Francisco, State of California, known and designated on the map of said city of San Francisco, as one hundred vara lot, number thirty-nine(39); that at the time the said grant was made as aforesaid, said plaintiff was an infant under the age of twenty-one years, to wit: of the age of ten years, and that one McDonald was acting in the capacity of guardian of said plaintiff, to which said guardian this plaintiff is informed and believes, and therefore avers, the said George Hyde duly delivered the said grant, for the use and benefit of the said plaintiff, whereby and by virtue whereof the said plaintiff became seized as owner in fee, and entitled to the possession of said premises; that on the first day of January, A. D. 1858, the said plaintiff was still seized and possessed as owner in fee, and entitled to the possession of said lot number thirty-nine, and that afterwards, to wit: on the day and year last aforesaid, and while said plaintiff was so seized and possessed of said premises as aforesaid, the said defendants wrongfully and unlawfully entered into and upon the same, and ousted and ejected the said plaintiff therefrom, and thence hitherto have and still do wrongfully and unlawfully withhold and detain from said plaintiff the possession of said premises, to his damage in the sum of five thousand dollars; that said plaintiff yet is seized as owner in fee, as tenant in common, and entitled to the possession of an undivided three-fourths of said premises; that the value of the rents and profits of said premises is the sum of three hundred dollars per month.

Wherefore, said plaintiff prays judgment against said defendants, that they render to him the possession of said premises, and that they be adjudged to pay to him damages for said unlawful and wrongful entry and ouster, and rents and profits of said premises, to the amount of twenty thousand dollars, together with all costs of suit.

S. O. HOUGHTON,
Att'y for Plaintiff.

Sworn to, the second day of April 1861.

STATE OF CALIFORNIA, *County of Santa Clara:*

I, George Donner, do solemnly swear, that I am the plaintiff named in the foregoing complaint; that I heard the same read, and know the contents thereof, and that the same is true of my
5 own knowledge, except as to the matters which are therein

stated on my information or belief, and as to those matters, I believe it to be true.

(Signed) GEORGE DONNER.

Subscribed and sworn before me, this second day of April, A. D. 1861.

Given under my hand and official seal, this second day of April 1861.

[L. S.] PETER O. MINER,
Notary Public in and for Santa Clara County, State of California.

Indorsed: Filed April 8th, 1861.
W. BARTLETT, *Clerk.*
Per W. R. SATTERLEE, *C. D.*

Answer of Cyrus Palmer.

In the District Court of the twelfth judical district in and for the city and county of San Francisco.

GEORGE DONNER, plaintiff,
vs.
CYRUS PALMER, CHARLES A. HAWLEY, David N. Hawley, W. A. Palmer, John Doe Spencer, and G. B. Bradford, defendants.

And now comes Cyrus Palmer, one of the defendants above named, and making his separate answer to the complaint herein, says, that he denies each and every allegation and averment in the complaint herein made, and denies the same generally and specifically.

And this defendant denies that George Hyde, as alcalde of the pueblo and now city of San Francisco, did on the nineteenth of July, 1847, or at any other time, grant and convey to the plaintiff, as owner in fee, all that certain lot or parcel of land lying in the city and county of San Francisco, State of California, known and designated on the map of said city of San Francisco as one hundred vara lot, number thirty-nine, (39,) or any part or portion of the same.

And denies that at the time said alleged grant was made, as is alleged in the said complaint that the plaintiff was an infant under the age of twenty-one years, and denies that he was of the age of ten years.

And denies that one McDonald was acting in the capacity of guardian to the plaintiff, as is alleged; and denies that George Hyde duly delivered the said alleged grant to said McDonald for the use and benefit of the plaintiff; and denies that George Hyde duly delivered the alleged grant to McDonald at any time or to any other person; and denies that the plaintiff became seized as owner in fee and entitled to the possession of said premises, or any part or portion thereof;

and denies that on the first day of January, A. D. 1858, or at any other time, the plaintiff was still seized and possessed as owner in fee of and entitled to the possession of said lot, numbered thirty-nine, or any part or portion of the same; and denies that afterwards, to wit, on the day and year last aforesaid, or at any other time, and while said plaintiff was seized and possessed of said premises as aforesaid, as is alleged, the defendant wrongfully and unlawfully entered into and upon the same or any part or portion thereof, and ousted and ejected the plaintiff therefrom; and denies that thence hitherto he has and still does wrongfully and unlawfully withhold and detain from said plaintiff the possession of said premises or any part or portion thereof; and denies that plaintiff is or has been damaged in the sum of five thousand dollars, or any other sum, as is alleged in his complaint; and denies that said plaintiff yet is seized in fee as tenant in common or entitled to the possession of an undivided three-fourths of said premises or any part or portion thereof.

And denies that the value of the rents and profits of said premises is the sum of three hundred dollars per month, as is alleged in the complaint.

And this defendant says that he is the lawful owner, and is in the lawful, peaceable, and quiet possession of all that certain portion of the one hundred vara lot, known and designated upon the official map of the city of San Francisco as one hundred vara lot number thirty-nine, which said one hundred vara lot is located on the southeast corner of Folsom and Second streets, in said city, to wit: Commencing at a point on the eastern line of Second street, distant southerly from the southeast corner of Folsom and Second streets, one hun-
7 dred and thirty-seven and one-half feet; thence running southerly on said line of Second street seventy feet; thence easterly at right angles with said Second street one hundred feet; thence northerly at right angles and parallel with Second street seventy feet; thence westerly at right angles one hundred feet to the place of beginning.

Wherefore, this defendant prays this hon. court, that this action as against him may be dismissed, and for judgment against plaintiff for his costs and disbursements.

CALEB BURBANK,
Att'y for Def't, Cyrus Palmer.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Cyrus Palmer being duly sworn, on oath says, that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except the things therein stated on information or belief, and as to those matters he believes it to be true.

CYRUS PALMER.

Sworn before me, this nineteenth day of April, A. D. 1861.
[L. S.] E. P. PECKHAM, *Notary Public.*
Indorsed: Filed April 19th, A. D. 1861.
W. BARTLETT, *Clerk.*
Per WM. R. SATTERLEE, *D. C.*

Replication to answer of Cyrus Palmer.

In the District Court of the twelfth judicial district in and for the city and county of San Francisco, State of California.

GEORGE DONNER, plaintiff,
vs.
CYRUS PALMER *et als*, defendants.

Now comes the said plaintiff, and replying unto the answer of
8 the defendant, Cyrus Palmer, denies that said defendant is the lawful owner, or is in the possession of all that certain portion of the one hundred vara lot, known and designated upon the official map of the city of San Francisco as one hundred vara lot number thirty-nine, which said portion is described as follows, to wit, commencing at a point on the eastern line of Second street, distant southerly from the southwest corner of Folsom and Second streets one hundred and thirty-seven and one-half feet; thence running southerly on said line of Second street seventy feet; thence easterly at right angles with said Second street one hundred feet; thence northerly at right angles and parallel with Second street seventy feet; thence westerly at right angles one hundred feet to the place of beginning; or any other part or portion whatever of said lot number thirty-nine.

Wherefore, said plaintiff prays judgment against said defendant.

S. O. HOUGHTON,
Att'y for Plaintiff.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

George Donner being duly sworn, upon his oath says, that he is the plaintiff in the above-entitled cause, that he has heard the foregoing replication read and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on his information or belief, and as to those matters he believes it to be true.

(Signed) GEORGE DONNER.

Subscribed and sworn to, this twenty-fourth day of April, A. D. 1861, before me.

SAM. C. HERMANN, *Notary Public.*

Indorsed: Service of a copy of the within is hereby acknowledged, April 25th, 1861.

CALEB BURBANK,
Att'y for Def't W. A. Palmer.

Indorsed: Filed April 25th, 1861.
W. BARTLETT, *Clerk.*
Per W. R. SATTERLEE, *D. C.*

9 *Answer of W. A. Palmer.*

In the District Court of the twelfth judicial district in and for the city and county of San Francisco, in the State of California.

GEORGE DONNER, plaintiff,
vs.
CYRUS PALMER, CHARLES A. HAWLEY, David N. Hawley, W. A. Palmer, John Doe Spencer, and G. W. Bradford, defendants.

And now comes W. A. Palmer, one of the defendants above named, and making his separate answer to the complaint herein, says, that he denies each and every allegation and averment in the complaint herein made, and denies the same generally and specifically.

And this defendant denies that George Hyde, as alcalde of the pueblo and now city of San Francisco, did on the nineteenth of July, 1847, or at any other time, grant and convey to the plaintiff, as owner in fee, all that certain lot or parcel of land lying in the city and county of San Francisco, State of California, known and designated on the map of the said city of San Francisco as one hundred vara lot number thirty-nine, (39,) or any part or portion of the same; and denies that at the time said alleged grant was made, as is alleged in the said complaint, that the plaintiff was an infant under the age of twenty-one years; and denies that he was of the age of ten years.

And denies that one McDonald was acting in the capacity of guardian of the plaintiff as is alleged; and denies that George Hyde duly delivered the said alleged grant to said McDonald for the use and benefit of the plaintiff; and denies that George Hyde duly delivered the alleged grant to McDonald at any time, or to any other person.

And denies that plaintiff became seized as owner in fee and entitled to the possession of said premises, or any part or portion thereof; and denies that on the first day of January, A. D. 1858, or at any other time, the plaintiff was still seized and possessed as owner in
10 fee of and entitled to the possession of said lot numbered thirty-nine, or any part or portion of the same; and denies that afterwards, to wit: on the day and year last aforesaid, or at any other time, and while said plaintiff was seized and possessed of said premises as aforesaid, as is alleged, this defendant wrongfully and unlawfully entered into and upon the same, or any part or portion thereof, and ousted and ejected the plaintiff therefrom; and denies that thence hitherto he has and still does wrongfully and unlawfully withhold and detain from said plaintiff the possession of said premises, or any part or portion thereof; and denies that plaintiff is or has been damaged in the sum of five thousand dollars, or any other sum, as is alleged in the complaint.

And denies that said plaintiff yet is seized in fee as tenant in common or is entitled to the possession of an undivided three-fourths of said premises, or any part or portion thereof; and denies that the value of the rents and profits of said premises is the sum of three hundred dollars per month as is alleged in the complaint; and this

defendant says that he is the lawful owner and is in the lawful, peaceable, and quiet possession of all that certain portion of the one hundred vara lot, known and designated upon the official map of the city of San Francisco as one hundred vara lot number thirty-nine, which said one hundred vara lot is located on the south-east corner of Folsom and Second streets in said city, to wit: Beginning at a point one hundred feet easterly from the south-east corner of Second street and Park Place, twelve and one-half ($12\frac{1}{2}$) feet; thence southerly at right angles, thirty-four feet; thence at right angles westerly, twelve and one-half feet; thence at right angles northerly, thirty-four feet to the place of beginning.

Wherefore, this defendant prays this honorable court, that this action as against him may be dismissed, and for judgment against plaintiff for his costs and disbursements.

CALEB BURBANK,
Att'y for Defendant, W. A. Palmer.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

W. A. Palmer being duly sworn, on oath says, that he has read the foregoing answer, and knows the contents thereof, and that the same is true of his own knowledge, except the things therein stated on information or belief, and as to those things he believes it to be true.

W. A. PALMER.

11 Sworn to before me, this nineteenth day of April, A. D. 1861.

[L. S.] E. P. PECKHAM,
Notary Public.

Indorsed: Filed April 19th, 1861.

W. BARTLETT, *Clerk.*
Per W. R. SATTERLEE, *D. C.*

Replication to answer of W. A. Palmer.

In the District Court of the twefth judicial district, in and for the city and county of San Francisco, State of California.

GEORGE DONNER, plaintiff,
vs.
CYRUS PALMER *et als*, defendants.

Now comes the said plaintiff, and replying unto the answer of the defendant, W. A. Palmer, herein, denies that said defendant is the lawful owner or is in the lawful possession of all that certain portion of one hundred vara lot, known and designated upon the official map of the city of San Francisco as one hundred vara lot number thirty-nine, which said portion thereof is described as follows, to wit:

Beginning at a point one hundred feet easterly from the south-east corner of Second street and Park Place, twelve and one-half feet; thence southerly at right angles, thirty-four feet; thence at right angles easterly twelve and a-half feet; thence at right angles northerly thirty-four feet, to the place of beginning, or of any part or portion whatsoever of said lot number thirty-nine.

Wherefore, said plaintiff prays judgment against said defendant.

S. O. HOUGHTON,
Att'y for Plaintiff.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

George Donner being duly sworn, upon his oath says, that
12 he is the plaintiff in the above-entitled cause, that he has heard the foregoing replication read, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters he believes it to be true.

GEORGE DONNER.

Subscribed and sworn to, this twenty-fourth day of April, A. D. 1861.

SAM. C. HERMANN,
Notary Public.

Indorsed: Service of a copy of the within is hereby acknowledged, April 25th, 1861.

(Signed) CALEB BURBANK,
Att'y for Def't, Cyrus Palmer.

Indorsed: Filed April 25th, 1861.

W. BARTLETT, *Clerk.*
Per WM. R. SATTERLEE, *D. C.*

Answer of Defendants Hawleys and Bradford.

In the District Court of the twelfth judicial district in and for the city and county of San Francisco.

GEORGE DONNER
vs.
CYRUS PALMER *et al.*

And the said defendants, Charles A. Hawley, David N. Hawley, and George B. Bradford, by their attorney, came and deposed, etc., and for answer to the plaintiff's complaint, say, they are informed, believe, and charge, that George Hyde did not, either in the exercise of powers conferred by law as alcalde or otherwise, convey or grant to said plaintiff, as owner in fee or otherwise, the lot of land mentioned in said complaint, either on the nineteenth day of July, 1847, or at

any other time; and they deny that any such grant or conveyance was made, or was ever delivered to the plaintiff, or to any one else for his use and benefit. And these defendants deny that, by virtue of such pretended grant, conveyance, or otherwise, the plaintiff, at any time, became seized or entitled to the possession of said
13 land, or any part thereof.

These defendants deny that they wrongfully or unlawfully entered into or upon said land, or that they ousted or ejected the pilantiff therefrom, or from any part thereof. And they deny that they wrongfully or unlawfully withhold the possession of said land, or any part thereof, from the plaintiff; or that they detain the same from him to his damage in the sum of five thousand dollars, or in any other sum whatever.

These defendants deny that the said plaintiff was at the time of the commencement of this action, or that he yet is, seized as tenant in common, or otherwise, or entitled to the possession of an undivided three-fourths of said land, or of any other part thereof, or estate therein; they deny that the value of the rents and profits of said land is the sum of three thousand dollars per month; on the contrary, they say that it is not over the sum of three hundred dollars per month.

Further answering, these defendants say that they are not now, nor have they at any time since the month of December, 1857, been in the possession or occupation of said land, save the northern half thereof and the eastern quarter of the southern half thereof; and they disclaim any and all right, title, interest, and estate in and to the residence thereof.

And for further answer in this behalf, these defendants say that the plaintiff was not seized or possessed of the demanded premises at any time within two years next before the commencement of this action; wherefore, they pray judgment that the plaintiff take nothing by his said action, etc.

E. W. F. SLOAN,
Attorney for Defendants above named.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

George Bradford, and David N. Hawley, for himself, and as agent for Charles A. Hawley, who is absent, the defendants in above action, being duly sworn, depose and say, that they have heard the foregoing answer read to them, and that they know the contents thereof, that the same is true of their own knowledge, except the matters and things therein stated on information and belief of said defendants, and as to those matters that they believe the same to be true.

(Subscribed and signed) GEORGE B. BRADFORD.
DAVID N. HAWLEY.

14 Sworn to this eleventh day of June, A. D. 1861, before me.
WM. R. SATTERLEE,
Dep. Clerk.

Indorsed: Filed June 11th, 1861.
W. BARTLETT, *Clerk.*
Per W. R. SATTERLEE, *D. C.*

Replication to answer of Hawleys and Bradford.

In the District Court of the twelfth judicial district of the State of California, in and for the city and county of San Francisco.

GEORGE DONNER, plaintiff,
vs.
CYRUS PALMER *et al.*, defendants.

George Donner, plaintiff, in reply to the answer of Charles A. Hawley, David N. Hawley, and George B. Bradford, says that he denies that George Hyde did not, either in the exercise of powers conferred by law as alcalde, or otherwise, convey or grant to said plaintiff, as owner in fee or otherwise, the lot of land mentioned in said complaint, either on the nineteenth day of July, 1847, or at any other time; but, on the contrary thereof, plaintiff alleges that said George Hyde did, on the said nineteenth day of July, 1847, in the exercise of powers conferred on him by law as alcalde of the then pueblo and now city of San Francisco, State of California, grant and convey to plaintiff the said plot of land in fee simple, as alleged in the complaint herein.

And, further replying to said answer, plaintiff denies that he was not seized or possessed of the demanded premises within two years next before the commencement of this action; and plaintiff says that until the tenth day of August, A. D. 18 , he was an infant of tender years, and did not attain majority until said day.

Wherefore, plaintiff prays for judgment in accordance with the prayer of his complaint herein.

S. O. HOUGHTON,
Attorney for Plaintiff.

STATE OF CALIFORNIA, *County of Santa Clara:*

15 George Donner, the above-named plaintiff, being first duly sworn, deposed and says that he has read the foregoing replication, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief; and, as to those matters, that he believes it to be true.

GEORGE DONNER.

Subscribed and sworn to before me, this twenty-first day of June, A. D. 1861.

[L. S.] GEO. M. YOELL,
Notary Public.

Indorsed: Due service of a copy of the within replication acknowledged this 22d day of June, 1861.

(Signed) E. W. F. SLOAN.

Indorsed: Filed June 22d, 1861.

W. BARTLETT, *Clerk.*
Per W. R. SATTERLEE, *D. C.*

Answer of O. W. Spencer.

In the District Court of the twelfth judicial district in and for the city and county of San Francisco.

GEORGE DONNER
vs.
CYRUS PALMER *et al.*

Now comes Oliver W. Spencer, one of the defendants sued in the above-entitled action, and makes this his separate answer to the complaint therein.

First. For his separate defense this defendant denies that on the nineteenth day of July, A. D. 1847, or at any other time, said Hyde, as alcalde, or otherwise, granted or conveyed to said plaintiff, as owner in fee, or otherwise, the lot or parcel of land described in said complaint, or any part thereof. Admits that at the time of said alleged grant, said plaintiff was an infant under twenty-one years.

And denies, according to his information and belief, that one McDonald, was at said time, or at any other time, acting in the capacity of guardian of said plaintiff. Denies, according to his information and belief, that said Hyde, at said time, or at any other time, delivered said grant or any other grant of said lot, or any part thereof, to said McDonald, or to any other person, for the use
16 or benefit of said plaintiff, or otherwise.

Denies that said plaintiff, by the means alleged in said complaint, or by other means, ever became seized as owner in fee, or otherwise, or entitled to the possession of said premises, or of any part thereof.

Denies that on the first day of January, A. D. 1858, or at any other time, said plaintiff was seized or possessed as owner in fee, or otherwise, or entitled to the possession of said premises, or any part thereof.

Denies that on said day, or at any time, this defendant wrongfully or unlawfully entered into or upon said premises, or any part thereof, or wrongfully or unlawfully ousted or ejected said plaintiff therefrom.

And denies that the defendant on said day, or at any other time, entered upon any part of said premises, or ousted or ejected said

plaintiff therefrom, except the part thereof bounded and described as follows: That certain piece or parcel of land in the city of San Francisco, being a sub-division of the one hundred vara lot, number three hundred and ninety-one, commencing at a point on the southerly line of said one hundred vara lot, distant easterly from the easterly line of Second street one hundred and thirty-seven and one-half feet, running thence easterly on the said southerly line of said lot sixty-eight feet nine inches; thence at a right angle northerly and parallel with Second street one hundred and thirty-seven and one-half feet; thence westerly and at a right angle and parallel with Folsom street sixty-eight feet and nine inches; thence at right angles southerly and parallel with Second street one hundred thirty-seven and one-half feet, to place of beginning.

Denies that defendant has since such day, or at any time, wrongfully or unlawfully withheld or detained from said plaintiff, the possession of said premises, or of any part thereof. And denies that defendant has since said day, or at any time, detained from said plaintiff the possession of any part of said premises, except said part hereinbefore described.

Denies that said plaintiff is yet, or ever was, seized as owner in fee or otherwise, or entitled to the possession of an undivided three-fourths, or of any other interest or part of or in said premises.

Second. For his second separate defense this defendant disclaims any ownership or possession, or right of possession, of or to any part of said premises, except the part thereof bounded and described as follows: That certain piece or parcel of land in the city of San
17 Francisco, being a sub-division of the one hundred vara lot number three hundred and ninety-one, commencing at a point on the southerly line of said one hundred vara lot, distant easterly from the easterly line of Second street one hundred thirty-seven and one-half feet, running thence easterly on the said southerly line of said lot sixty-eight feet nine inches; thence at a right angle northerly and parallel with Second street one hundred and thirty-seven and one-half feet; thence westerly and at a right angle and parallel with Folsom street sixty-eight feet nine inches; thence at a right angle southerly and parallel with Second street one hundred thirty-seven and one-half feet, to the place of beginning. And as to said part so described this defendant says that he now is, and was at the commencement of this action and the filing of the complaint therein, the owner in fee simple of such part, and of right in possession of the same.

SHATTUCK, SPENCER & REICHERT,
Attorneys for Spencer.

STATE OF CALIFORNIA, *City and County of San Francisco, ss:*

Oliver W. Spencer, one of the defendants in the above-entitled action, being duly sworn, deposes and says, that he is one of the defendants in the above-entitled action; that he has heard the foregoing answer read and knows the contents thereof; that the same is

true of his own knowledge, except the matters therein stated on information or belief, and as to those matters that he believes it to be true.

O. W. SPENCER.

Indorsed: Filed June 15th, 1861.

W. BARTLETT,
Per WM. R. SATTELEE, *D. C.*

Subscribed and sworn to before me, this fourteenth day of June, A. D. 1861.

JOHN A. REICHERT,
Notary Public.

18 *Replication to answer of O. W. Spencer.*

In the District Court of the twelfth judicial district of the State of California, in and for the city and county of San Francisco.

GEORGE DONNER, plaintiff,
vs.
CYRUS PALMER *et al.*, defendants.

And now comes said plaintiff, George Donner, and in reply to the second separate defence or answer of Oliver W. Spencer, sued as John Doe Spencer, one of said defendants, says that he denies that said defendant, Oliver W. Spencer, now is, or was at the time of the commencement of this action and the filing of the complaint therein, or at any other time, the owner in fee simple or otherwise, or of right in the possession of any portion of the premises described and demanded in the complaint herein, and particularly of that part thereof bounded and described as follows: That certain piece or parcel of land in the city of San Francisco, being a sub-division of the 100 vara lot No. 39, at a point on the southerly line of said 100 vara lot, distant easterly from the easterly line of Second street, one hundred thirty-seven and one-half feet, running thence easterly on the said southerly line of said lot sixty-eight feet nine inches; thence at a right angle northerly and parallel with Second street one hundred thirty-seven and one-half feet; thence westerly and at a right angle and parallel with Folsom street sixty-eight feet and nine inches; thence at a right angle southerly and parallel with Second street one hundred thirty-seven and one-half feet, to the place of beginning; but, to the contrary thereof, plaintiff alleges that he is the owner and entitled to the possession of the same as alleged in the complaint herein.

Wherefore, plaintiff prays for judgment in accordance with the prayer of his complaint herein.

S. O. HOUGHTON,
Attorney for Plaintiff.

STATE OF CALIFORIA, *County of Santa Clara, ss:*

George Donner, the above-named plaintiff, being first duly sworn, deposes and says, that he has read the foregoing replication

and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are herein stated on his information or belief, and as to those matters that he believes it to be true.

GEORGE DONNER.

Subscribed and sworn to this 21st day of June, A. D. 1861, before me.

[L. S.] GEO. M. YOELL,
Notary Public.

Indorsed: Due service of a copy of the within replication acknowledged this 22d day of June, 1861.

(Signed) SHATTUCK, SPENCER & REICHERT,
Attorneys for Spencer.

Filed June 22d, 1861.

W. BARTLETT, *Clerk.*
Per W. R. SATTERLEE, *D. C.*

Intervention of H. W. Bradley.

In the District Court of the twelfth judicial district in and for the city and county of San Francisco.

GEORGE DONNER, plaintiff,
vs.
CYRUS PALMER, W. A. PALMER, CHARLES A. Hawley, David N. Hawley, Oliver W. Spencer, G. B. Bradford, defendants.

The complaint of Henry W. Bradley, of the city and county of San Francisco, an intervenor in the above-entitled cause, alleges as follows, as the grounds of his intervention:

That issue has been joined in the above-entitled cause, and that the same is now pending, undetermined.

That this complainant is the owner in fee simple, and entitled to the possession of the undivided one-fourth part of the following described premises, situated in the city and county of San Francisco, and State of California, and known on the official map of said city as 100 vara lot No. 39, commencing at the easterly intersection of Folsom and Second streets; thence running southerly on the easterly line of Second street one hundred varas; thence at right angles northeasterly one hundred varas; thence at right angles northwesterly one hundred varas, to Folsom street; thence along the southerly line of Folsom street one hundred varas southwesterly to the point of beginning; being the one undivided fourth part of the said premises mentioned in plaintiff's complaint; that is, the undivided one-third of the undivided three fourths thereof, as mentioned therein.

That afterwards, and prior hereto, when this complainant was so lawfully the owner of and entitled to the possession of said lands and

tenements as aforesaid, said defendants unlawfully entered into and trespassed upon said premises, and unlawfully ejected this complainant therefrom, and have ever since unlawfully kept and withheld, and now do unlawfully keep and withhold, the possession of said lands and tenements from this complainant.

Complainant further alleges, that he has an interest in the matter in litigation and in the success of the plaintiff therein and against said defendants.

Wherefore, this complainant prays that he may become a party to said action by joining the plaintiff in claiming the relief which is sought by his said complaint on file herein, and that he may have judgment for the possession of said lands and tenements above mentioned and described from said defendants and for costs of suit.

T. A. LAWRENCE,
Att'y for Bradley.

STATE OF CALIFORNIA, *City and County of San Francisco, ss:*

Henry W. Bradley, being sworn, says that he is the complainant above named; that he has read the foregoing complaint. and knows the contents thereof; that the same is true of his own knowledge, except as to matters stated to be on information and belief, and as to those matters he believes it to be true.

H. W. BRADLEY.

Sworn to and subscribed before me, this twenty-fourth day of December, 1861.

[L. S.] E. P. PECKHAM,
Notary Public.

Indorsed: Filed Dec. 24, 1861.

W. BARTLETT, *Clerk.*
Per W. R. SATTERLEE, *D. C.*

21 *Answer of O. W. Spencer to intervention.*

In the District Court of the twelfth judicial district in and for the city and county of San Francisco.

GEORGE DONNER
vs.
CYRUS PALMER *et als.*

Oliver W. Spencer, one of the defendants in the above action, for his separate answer to the intervention of Henry W. Bradley, filed therein, says that he admits that issue has been joined in said action, and that the same is now pending and undetermined. And this defendant further says, that he denies that said intervenor is the owner in fee simple, or entitled to the possession of the one undivided fourth part, or any other part or interest in said premises, or any part thereof.

And this defendant denies, that he ever unlawfully entered into, or ever trespassed upon said premises, or any part thereof, or ever

ejected said intervenor therefrom, or that he has ever since unlawfully kept or withheld, or now unlawfully keeps or withholds, the possession of said lands and tenements, or any part thereof, from said intervenor.

And for a further and separate defence, this defendant says, that he is now, and was at the commencement of this action, and long prior thereto, the owner in fee, and as such in possession of that certain piece or parcel of land situate in said city and county of San Francisco, being a sub-division of 100 vara lot No. 39, described as follows: commencing at a point on the southerly line of said 100 vara lot, distant easterly from the easterly line of Second street one hundred thirty-seven and one-half feet; running thence easterly on said southerly line of said lot, sixty-eight feet nine inches; thence at right angles northerly and parallel with Second street one hundred thirty-seven and one-half feet; thence westerly at a right angle and parallel with Folsom street sixty-eight feet nine inches; and thence at a right angle southerly and parallel with Second street one hundred thirty-seven and one-half feet, to the point of commencement. But this defendant does not now, and never did hold, and is not now and never was possessor of any other portion of the premises described in said intervention, and hereby disclaims any and all right, title, and interest in or to said premises, except in and to the lot of ground above particularly described.

And for a further and separate defence this defendant says,
22 that neither said intervenor, H. W. Bradley, nor the ancestor, predecessor, or grantor of him, said intervenor, was seized or possessed of that lot of ground described as follows, to wit: commencing at a point on the southerly line of said 100 vara lot No. 39, distant easterly from the easterly line of Second street one hundred thirty-seven and one-half feet; running thence easterly on said southerly line of said lot sixty-eight feet nine inches; thence at right angles northerly and parallel with Second street one hundred thirty-seven and one-half feet; thence westerly at a right angle and parallel with Folsom street sixty-eight feet nine inches; and thence at a right angle southerly and parallel with Second street one hundred thirty-seven and one-half feet, to the point of commencement, being a part of the lot of ground described in his said intervention; or was seized or possessed of any portion or interest in such part within five years next before the filing of the complaint in this action; and that this defendant, his ancestors, predecessors, and grantors have been seized and possessed of said above-described lot of land, exclusively of, and not as the joint tenant or tenants in common of the said intervenor, H. W. Bradley, or of any person whomsoever, for more than five years next before the filing of the said complaint herein and of said intervention.

And this defendant says said intervenor should not have and maintain his said intervention against this defendant.

Wherefore, defendant asks to be hence dismissed with his costs.

SPENCER & REICHERT,
Atty's for Def't, Spencer.

Indorsed: Due service of a true and sufficient copy of the within answer is hereby admitted, Jan'y 14th, 1862.

(Signed) E. A. LAWRENCE,
Att'y for Intervenor.

Filed January 14th, 1862.

W. BARTLETT, *Clerk*,
Per W. SATTERLEE, *D. C.*

23 *Stipulation as to the answers of Bradford and Hawleys.*

In the District Court of the twelfth judicial district, in and for the city and county of San Francisco.

DONNER
vs.
PALMER *et al.*

It is hereby stipulated that the answers of Bradford and C. A. and D. N. Hawley, may stand as answers to the intervention of Bradley, and that the replication of Donner to the said answer may stand as the replication thereto of said Bradley.

(Signed) E. A. LAWRENCE,
Att'y for Bradley.

San Francisco, Jan. 2, 1862.

Waiver of damages.

In the District Court twelfth judicial district State of California.

GEORGE DONNER
vs.
CYRUS PALMER *et al.*

And now, on the twenty-seventh day of January, A. D. 1862, comes the plaintiff and says, that he will not at this time further prosecute his said claims in his said complaint contained, for the rents, mesne profits, and damages for the detention of said lands, or any of them. Therefore, as to the same, let the said defendants be acquitted and go thereof, without say, etc.

S. O. HOUGHTON,
Att'y for Pl'ff.

Indorsed: Filed January 27th, 1862. W. Bartlett, clerk. By L. S. Lupton, D. C.

24 *Order directing judgment to be entered.*

In the District Court of the twelfth judicial district of the State of California, in and for the city and county of San Francisco, July term.

THURSDAY, *August 17th*, 1865.

Present, Hon. O. C. Pratt, judge.

GEORGE DONNER, plaintiff,
vs.
CYRUS PALMER *et al*, defendants.

In this case the court now finds upon the question of law in favor of the plaintiff, against both defendants and intervenor, and orders judgment to be entered accordingly.

I hereby certify the foregoing to be a full, true, and correct copy of an order entered on the minutes of said Twelfth District Court, in the above-entitled cause.

Attest my hand and seal of said District Court, this eighth day of January, A. D. 1866.

[L. S.]

WM. LOWRY, *Clerk*,
By ANDREW D. SMITH,
Deputy Clerk.

Judgment.

In the District Court of the twelfth judicial district in and for the city and county of San Francisco, State of California.

GEORGE DONNER, plaintiff,
vs.
CYRUS PALMER *et als*, defendants, and HENRY W. BRADLEY, intervenor. } No. 8,641.

This cause came on regularly for trial upon the day the same was set for trial upon the calendar. John W. Dwinelle, Alexander Campbell, and S. O. Houghton, appearing for said plaintiff, and S. M. Wilson, E. W. F. Sloan, and S. F. Reynolds appearing for said defendants, and E. A. Lawrence for said intervenor. Thereupon, counsel for said plaintiff filed in open court a nolle prosequi as to the claim for rents and profits and damages for the detention of the lands claimed in his complaint; and a jury of twelve persons having been duly empaneled and sworn, and the court having heard the testimony of said parties—plaintiff, defendant, and said intervenor—and the arguments of counsel having been heard, the jury were duly charged by the court, and thereupon retired to deliberate upon their verdict, and subsequently return into court and say they find a verdict for the plaintiff against the defendant for the land claimed in the complaint. And during the trial of this action, all the parties, by their respective counsel, by their written stipulation filed in this cause, in open court consented and agreed that the question as to tax titles relied upon by the defendants be withdrawn from the jury, and submitted to the court for finding and decision. And said parties having also, by written stipulation of their said counsel, duly filed herein, agreed that the issues between the said intervenor and said plaintiff and the defendants be also withdrawn from the jury and submitted to the court for decision; and the court having heard the arguments of counsel, and being fully advised, delivered its finding

and decisions in writing, which are filed herein, wherein it is ordered that judgment be entered in favor of said plaintiff, and against said defendants and said intervenor.

Wherefore, by virtue of the law, and by reason of the premises, it is ordered, adjudged, and decreed, that George Donner, the plaintiff herein, do have and recover of and from Cyrus Palmer, W. A. Palmer, Charles H. Hawley, David N. Hawley, George B. Bradford, and Oliver W. Spencer, defendants, and Henry W. Bradley, intervenor, the possession of the premises described in the complaint herein, as follows:

All that certain lot or parcel of land lying in the city and county of San Francisco, State of California, known and designated on the map of said city of San Francisco, as one hundred-vara lot number thirty-nine (39.)

And it is further ordered, adjudged, and decreed, that said intervenor, Henry W. Bradley, take nothing by his intervention herein.

And it is further ordered, adjudged, and decreed, that the plaintiff do have and recover of and from said defendant, his costs
26 and disbursements incurred in this action, amounting to the sum of two hundred and twenty dollars and twenty-five cents, ($220 25.)

And it is further ordered, adjudged, and decreed, that said plaintiff do have his writ of possession for said premises and execution for his costs and disbursements.

Judgment entered, December 20th, 1865.

District Court of the twelfth judicial district of the State of California, in and for the city and county of San Francisco.

GEORGE DONNER
vs.
CYRUS PALMER *et al.*

CITY AND COUNTY OF SAN FRANCISCO, *ss:*

I, Wm. Loewy, county clerk of the city and county of San Francisco, State of California, and ex-officio clerk of the District Court of the twelfth judicial district thereof, do hereby certify the foregoing to be a true copy of the judgment entered in the above entitled cause, and recorded in book F of said court, at page 107; and I further certify that the foregoing papers hereto annexed, constitute the judgment roll in said cause.

Witness my hand and the seal of said District Court, this 20th day of December, A. D. 1865.

(Signed) WM. LOEWY, *Clerk.*
[L. S.] By G. C. LETCHER,
Deputy Clerk.

Indorsed: Filed December 20th, 1865.
WILLIAM LOEWY, *Clerk.*
By G. C. LETCHER,
Deputy Clerk.

Notice of motion for new trial.

In the District Court of the twelfth judicial district of the State of California, in and for the city and county of San Francisco.

GEORGE DONNER
vs.
CYRUS PALMER *et al.*

You will please to take notice that the defendants in the above-entitled action, intend to move the said court to set aside and
27 vacate the verdict, findings, and judgment heretofore entered herein, and to grant a new trial of said action; said motion to be founded on the following grounds.

1st. Insufficiency of evidence to justify the verdict, and that it is against law.

2d. Error in law occurring at the trial, and excepted to by the defendants.

3d. Newly discovered evidence, material for the defendants, and which could not with reasonable diligence have been discovered and produced at the trial.

Yours, etc.,

E. W. F. SLOAN,
S. M. WILSON,
And S. F. & J. REYNOLDS,
Attorneys for Defendants.

To the CLERK of said court, and Messrs. S. O. Houghton, esq., J. W. Dwinelle, esq., plaintiff's attorney, and A. A. Lawrence, esq., att' y for intervenor.

Indorsed: Service of this notice, and receipt of a copy acknowledged this 25th August, 1865.

(Signed) S. O. HOUGHTON,
Plff s Att' y.

Statement.

In the District Court of the twelfth judicial district in and for the city and county of San Francisco.

GEORGE DONNER
vs.
CYRUS PALMER *et al.*

Before Hon. O. C. Pratt and a jury.

Statement on motion for a new trial, and on appeal by defendants.

Be it remembered, that on the trial of this cause in the court aforesaid, the plaintiff, to maintain the issue on his part, called to the stand J. F. Sears, a witness sworn on behalf of plaintiff, who produced from the office of the recorder of the said city and county, a book labeled "Book A, of original grants," and testified that he had been employed in said office nearly eight years last past, and that said book had been in said office during all that time.

28 George Hyde being then called and sworn on behalf of plaintiff, testified, as follows:

1. Will you state, Mr. Hyde, whether you ever held any official position in the pueblo of San Francisco?

Yes, sir.

2. In what capacity, and in what year?

I was alcalde of San Francisco, in 1847.

3. What is that book? (Pointing to a book lying on the bench, nearly in front of witness.)

"Book A, of original grants."

4. Was it kept in your office at that time?

Yes, sir.

5. Turn to page 179 of that book, and direct your attention to the second entry at the top of the page, being the entry as to 100 vara lot No. 39.

I see it, sir.

6. The name of George Hyde is to that entry, is it not? Do you recognize the signature?

Yes, sir.

7. Is that your signature?

I have no doubt of it, sir.

8. When was it placed there.

Whilst I was alcalde.

Cross-examined:

9. What time did you commence your functions as alcade?

About the first of June, 1847.

10. Who immediately preceded you in office?

Mr. Edwin Bryant.

11. What initials did you give to Bryant?

Edwin.

12. Who immediately succeeded you?

For about two weeks, Mr. Leavenworth, till the appointment of Dr. Townsend; Dr. Townsend was my immediate regularly appointed successor.

13. The name of that book is marked on the back.

Yes, sir.

14. Do you know who labeled that volume?

No, sir.

15. Can you explain what is meant by "original grants," as labeled on it?

I suppose it means a record or list of all the grants that were made in this place.

29 16. A first record or list of what?

I suppose that the book contains a list or record of the grants made somewhere. There is nothing on the outside to designate where.

17. Does that book contain any other than original entries? What do you mean by original entries? Original entries of what?

It contains a copy of the original instruments in whole or in part, sometimes the entire, and sometimes the part.

18. Are the entries in chronological order from the commencement to the close?

Pretty nearly so, generally speaking, it is so. The entries in the beginning of the book are copies of the Spanish grants made by the authorities previous to the occupation of the country by the Americans. Following this came the certificates made by the American alcaldes. The reason why a copy is made in this book of the original Spanish grants is in accordauce with Mr. Bartlett's arrangements. He commenced in the middle of the book, intending to place in the first half of the bock all the Spanish grants and then to insert their translation. Only the first twenty or thirty pages were so kept. The last half of the book was used for copying of grants issued by him at the acquisition of the country, and is so used. Perhaps there are one or two instances where there is a record of a transferred deed among them. So that taking the book in that way, commencing at the middle for the grants, it will be found that the certificates are arranged chronologically.

16. Are there not some entries made there by yourself?

Yes, sir.

20. Were you in the habit of making the record simultaneously with the grant?

Pretty nearly so. It might vary a day or two.

21. I will ask you whether entries were not made there by the alcade, and frequently signed by him before the delivery of the grant?

(Question objected to by counsel for plaintiff.)

I ask you whether the alcalde was not in the habit of cancelling the entry made in that book if the municipal fee was not paid?

(Question objected to, but admitted by the court.)

Mr. Bartlett did in some instances.

22. Do you know of your own knowledge, if, during the time you acted as alcalde, there were any entries made of a thing having been done previous to its completion?

The fact would not be a complete fact until the certificate had the signature of the alcalde, consequently, it would not be a complete fact until that was done. Now, so far as I am concerned, that was a fact. The certificate remained unsigned until the money was paid.

23. By the court:

You say that it was a fact that the entries were made in the body of the book perhaps anterior to the occurrence of the fact recited, but that these entries were made in the sense of not being complete until the signature was appended and the fees paid.

Yes, sir.

24. By counsel:

Did you not, during the time you were alcalde, make repeated

entries in that book to the effect that the certified grant was void or canceled, by reason that the municipal fee was not paid, or that the grant was not called for, or for some other cause—which entries bore the signature of your predecessor?

Yes, sir, there are some thirty or forty instances of that kind.

25. How did you arrive at the knowledge that the fees were not paid?

I arrived at that knowledge from the way these things were managed. First, the alcalde cannot issue a certificate until the fees are paid and the grants delivered; and with regard to these grants, they were handed over to the sindico for delivery and collection of the fees. Then the alcalde's account book shows that they were returned to the office by the sindico, when Mr. Bryant published a notice that the parties to whom they were issued should call for them within a limited time, otherwise they would be subject to be canceled. No one called for them, and when he turned the office over to me on the first of June, he turned over about thirty or forty of such grants. These grants he had on record as if they had been issued. When I came into the office I also published a similar notice with respect to them, and limited the time when, if not called for they should be canceled. When any one else subsequently obtained these grants a new entry was made and the old one canceled.

26. Did you follow the course of Mr. Bryant in handing over the grants to the sindico for collection of fees and delivery?

In some cases I did. I generally departed from that system in order to avoid similar confusion. I generally compelled the parties to come to the office. I compelled the sindico and the grantees to come together.

31 Did you sign any certificates on the record before the grants were delivered?

I cannot say; most likely I did; but these instances were few, perhaps not exceeding ten. The record of the certificate was put into the book, and remained unsigned until the money was paid. That was my rule.

28. Cannot you call to mind an instance in which you signed the record before the money was paid?

During the month I was temporary alcalde, there was some such case.

29. In which you signed the record, and afterwards canceled it?

It appeared so; and in one case the record was signed, and the grant was not signed.

30. Mention that instance you now allude to; describe what case it was.

Somebody by the name of Green.

31. Can you state what lot it was?

I cannot tell the number; it was over in Telegraph Hill.

32. You state you believe that to be your signature?

(Counsel here pointed to the entry of lot 39 in book A of original grants, page 179.)

Yes, sir.

(This entry appears below.)

33. Did you make that entry on the nineteenth day of July, 1847?

Yes, sir; there might be two or three days difference.

34. If the fees had been paid in the month of October, instead of July, would you have placed your signature there before October?

No, sir.

35. Then how do you know you did place your signature there in July, at all?

I cannot say; that is my impression; I have no independent recollection of the fact.

36. State whether it was at all likely you made that entry in a different kind of ink from that in which the other entries preceding and following were made?

There is a slight variation in the color of the ink.

37. The signature and the number seemed to be made with the same ink?

Yes, sir.

38. Can you state any particular time when you received any article of new ink in the office?

No, sir; I have stated it was about the nineteenth of July
32 when I signed the record; it may have been a longer time; it may be after that date. The certificate is dated the nineteenth of July, and I have not the remotest doubt but that it was written on that day, or soon after; but whether my signature was written on that day or on towards September, I cannot determine.

39. Look at the book (of original grants, page 191;) state what it purports to be.

This entry was as follows, viz.: Record of original grants of town lots in Yerba Buena, district of San Francisco, granted in conformity with the laws and usages established by the executive government of California for the governance of the alcalde or chief magistrate of San Francisco, as fully set forth in the official archives of the district, recorded in the first register of titles. placed at the opening of this book, and other public documents. Therefore, from and after this date, all titles issued will be in manner and form shown on the opposite page, and the record of such grant will be found consecutively placed on the book of records.

WASHN. A. BARTLETT,
Chief Magistrate.

The witness here examined the above entry, and also the entry on the opposite page, which is as follows, viz:

Territory of California, district of San Francisco, original grant of town lot No. —.

Whereas, by authority of the late government of the department of California, power and authority was given to the alcalde (justice) of San Francisco, to grant lots of land for building and improving the town Yerba Buena, in the district of San Francisco, as appears by the various orders of said government, issued at Monterey, the

twelfth day of December, A. D. 1839; twenty-third of April, 1841; and third of April, 1842, wherein the executive authority of the department declares said power and authority vested in said justice, and directing that the said alcalde (justice) exercise the aforesaid powers.

And whereas, those powers were exercised by the various successive alcaldes, (justices,) until the ninth day of July, A. D. 1846, when the district was taken by the arms of the United States of America, as an act of war between the United States of America and Mexico. And whereas, his excellency, Robert F. Stockton, Governor and Commander-in-chief of the Californias, by his proclamation given
33 at Los Angeles, on the seventeenth day of August, A. D. 1846, directs all civil officers "to administer the laws, according to the former usages of the territory."

Therefore, considering the above-described powers, as shown by the archives of the magistracy of San Francisco, as in full force, and binding upon me, having been duly elected (commissioned) and confirmed in the exercise of the magistracy of the said district; and considering and admitting the prayer of the petitioner, hereunto attached' I, Washington A. Bartlett, acting first magistrate and justice of San Francisco, in conformity with the regulations and usages recorded in the archives of the magistracy aforesaid, do hereby grant, convey, and confirm unto the petitioner,
now resident in said town of Yerba Buena, district aforesaid, the lot of land lying and being in said town, containing an area of fifty Spanish varas square, said lot being numbered on the present plan) of Yerba Buena, recorded in this office, giving unto the said , legal, judicial, and perpetual possession thereof unto him, the said ,
his heirs, and assigns for their own proper use, benefit, and behoof, forever, under the following conditions.

1st. The said shall, within the time of one year from the date hereof, have said lot numbered fenced in; and a house built upon it.

2d. The said , his heirs and assigns, shall conform entirely to the police regulations now established.

3d. That, failing to comply with the first article of these conditions, the said , his heirs and assigns, shall lose all right and title to the said lot; and for the violation of article second, shall incur the penalties which may be imposed according to law.

And the said , his heirs and assigns, shall have full and valid title to said lot, No. , and be considered and held in legitimate possession thereof. This deed of grant is given under my hand and seal, and recorded in the archives of land titles in the magistracy of San Francisco, this
day of , A. D. 184 .

After examining these two entries, the witness answered to the first one above, that it was a memorandum of Mr. Washington A. Bartlett.

40. Is the entry on the opposite page in print or in writing?

In print, and in the form of a grant

34 41. I will ask you now, whether you did not pursue the directions and plans inaugurated by Mr. Bartlett, as to these grants, during the time you were in office?

Not in all cases.

42. Do you mean as to the record, or the form?

The form was not always literally carried out.

43. Do you mean as to the form of the grant, or as to the form of the entry?

The form of the grant.

43. As to the form of the entry, was it not subsequently followed?

In nearly all cases, except perhaps in a few, where a different form was adopted.

45. In the different forms of grants subsequently made out by you, were they not in the form there directed?

Nearly all of them.

46. Was there any substantial variation?

The grants of the fifty varas were in that form; those of the hundred varas in a different form.

47. Wherein did the form of the hundred vara lots differ from the form of the fifty vara?

It differed in the form of the granting part. The form of the hundred vara differed from the fifty vara lot in that the grant was in these words: "grant, convey, and confirm to the grantee, his heirs and assigns," while the fifty varas was made in these words, "convey perpetual possession."

44. It was merely in the introductory part it differed?

No; it differed also in the conclusion.

45. Well, where did it differ?

I cannot remember whether the conditions annexed were included or not.

46. Now can you remember any other differences?

Some slight difference—some difference as to mere words.

47. Was that part omitted as to giving legal possession?

I am not sure.

48. Turning to page 175, lot 182, does that contain an entry of a certificate that was signed by you? (This entry appears below.)

It contains two.

49. When was that signed by you?

About the time of its date.

50. What is the date?

The sixteenth day of July, 1847.

51. At the time it was signed had the money been paid?

It had.

35 52. Who was the grantee?

A man by the name of J. Owens.

53. In whose hand writing is the entry?

In Mr. Pettit's.

54. Who is Mr. Pettit?

A clerk in the office.

55. Did he make that cancellation by your authority?

Yes, sir.

56. What do the words "not taken," mean?

They mean that on the sixteenth day of July the grant was issued, and canceled at some other time.

57. Was it delivered?

I know it was.

58. Do you recollect that fact?

Yes, sir.

59. Who was the grantee?

John Owens.

60. Who is John Owens?

That is all I know about him.

61. Did you ever see him afterwards?

I think I saw him once.

62. Where afterwards did you ever see him?

Either in the alcalde's office, or at the beach.

63. How long after that entry was signed was it before the cancellation was made?

A little over a month—about a month.

64. Had you that fee in your possession for a month before the cancellation was made?

Yes, sir; I must have had it.

65. Did you return the money back to him?

I suppose I did. The circumstances of that lot were, that Mr. Owens took it out either for somebody else or to sell it to somebody else, and he was giving a transfer of it to that person when some difficulty arose between them; whatever that difficulty was, it terminated in the consent of all parties and in the entrys being made void. I cannot tell why it was made void.

66. When grants were returned to the office as not taken up, for reasons assigned, were not the entries in the book made to correspond with that fact?

It may be.

67. I ask you, did you not use the words "not taken," to show that the grant had not been issued?

I had no arbitrary rule about it.

68. Can you find a single instance in that book where the
36 words "not taken," mean that the grant was returned by consent?

There was no arbitrary rule for the words.

69. I ask you to state a single instance?

A grant made to McCoy was one of the kind.

70. Was that grant returned to the office?

Undoubtedly.

71. Was it canceled?

Yes, sir.

72. Do you not know that it was actually retained by McCoy?

No, sir.

73. Do you know of Mr. Crittenden having discovered that deed?

No, sir; I don't know anything about it.

74. Did Mr. McCoy get any other grant in place of 272?

When he returned that one he got another, lot 271, in its place. This grant, 272, was made by me, and dated twenty-ninth of December, 1845.

75. That lot was on the corner of Montgomery and Pine streets?

Yes, sir.

76. Do you know that McCoy's grant was canceled?

I know it was canceled.

77. Don't you know that grant 272 is in existence?

I don't know that it is in existence.

78. What is the date of the one you have before you (272)? (This is contained herein below.)

The twenty-ninth of September, 1846.

79. You say that grant was returned?

Yes, sir; it was returned to the office.

80. Was it destroyed?

I could only say from hearing; I did not see Mr. Bartlett destroy it.

81. You say 271 was granted to McCoy?

Yes, sir.

82. Does that book show any grant to McCoy at all?

Yes, sir.

Show it to me.

(Witness here took the book, and after examining it for a short time, pointed out a grant of a lot marked 272 to McCoy, granted by Washington A. Bartlett, in which the numbers were altered from 271 to 272. And this appears herein below.)

37 84. How, were you not about the alcalde's office at this time—about the eighth of February, 1849?

I think so.

85. Don't you know of your own knowledge that the grant was not altered on its face?

That I don't know.

86. Were you not present at a former trial when this question came up?

I can't say; I have no remembrance of it.

87. Did you not prove the signature of Mr. Bartlett on that occasion?

I don't know.

88. Now, sir, will you state that the grant, which was delivered by you, was returned to the office and canceled?

I think it was.

89. Was the grant ever received by Mr. Owens?

I know that there was some difficulty between the person that brought it and Mr. Owens; what that difficulty was I do not know.

90. Will you swear that the grant was ever delivered?

I have not the smallest doubt but it was; that is, it passed into the hands of somebody else, if not to him.

91. Look at page 153; are those cases in which grants had been delivered by you?

I think they were.

(These entries are found herein below.)

92. Were the fees paid in these cases?

Yes, sir.

93. Were the deeds returned to the office and canceled?

Yes, sir.

94. Were these reasons assigned when they were returned?

Yes, sir.

95. Were these true reasons?

Yes, sir.

96. Was it not your general rule to specify those reasons in that book?

There was no arbitrary rule about the matter; the entry was merely indicated by the fact that the grant did not actually issue.

97. What do you mean by the grant not issuing?

That it did not go out of the office.

98. You state that there was some thirty or forty grants not delivered by Bryant?

Yes, sir.

38 99. Now, was it usual, after your published notice to parties to call for them had expired, to write the words "not taken," as indicative of the fact that they had not come for grants?

Certainly not.

100. Turn to Mercantile Library, lot 254; have you found the first entry of that?

Yes, sir.

101. On what page is the first entry?

Page 273.

(This entry appears herein below.)

102. That entry purports to be a copy of a petition, and a copy of a grant issued by yourself to John Kettleman?

Yes, sir.

103. What it that below it?

It is a receipt by Mr. Sherrebeck.

104. Is that the original, or is it a copy?

A copy.

105. In whose handwriting is it?

Mr. Dunleavy's.

106. Who is he?

He was a clerk in the office.

107. Who is Sherreback?

He was the collector of the office.

108. Was that grant ever issued?

No, sir.

109. Was it ever delivered?

No, sir.

110. Was it ever signed by you?

That I am not certain about; my impression is, that it was not.

111. You would not state positively.

I would not undertake to say. I had a strong impression that I did not sign it, owing to the fact that the matter was not completed; but it may be that myself and Sherreback both signed it.

112. Was it ever delivered?

No, sir.

113. Was the money ever paid?

No, sir.

114. Was that lot afterwards ever granted to any person else?

It was granted by Mr. Bryant.

115. What is the cancellation?

"Not taken."

39 116. Who was it granted to?

To Mr. H. DeFleet.

117. Is that also canceled?

Yes, sir.

118. Who made the memorandum under it?

I suppose Mr. Buchanan, although it is signed by Mr. Bryant.

119. Was that lot ever afterwards granted again?

It was granted by me to Captain Gilson.

120. Was there any formal entry made of it?

Yes, sir.

121. Any cancellation of that?

No.

122. Did you deliver that grant?

Yes, sir.

123. Were the fees paid?

Yes, sir.

124. Turn to fifty vara lot 219, page 227; what do you find there?

I find a clean record of lot 219.

(This is contained herein below.)

125. By what alcalde?

By E. Bryant.

126. To whom?

Peter Lawson.

127. Is this a clean record of that?

Yes, sir.

128. No erasure?

No, sir.

129. Was that lot subsequently granted by you?

I dont know, sir.

130. Look to March 13, 1848; did you make the grant for that lot?

I think it was a deed under a town sale, by order of the town council.

131. It was a grant on a petition?

I don't remember; it may be so.

132. On page 263, what do you find there?

I find a grant petitioned for by George Hyde.

(This is found herein below.)

133. To whom is the petition addressed?

To George Hyde, alcalde.

134. In whose handwriting is it?

The first part is in the handwriting of Dunleavy, the clerk, and the rest is mine.

40 135. Is the signature yours?

Yes, sir.

136. Did you copy that from the original grant?

Yes, sir.

137. How do you account for the fact that part of the writing is in your handwriting, and part of it your clerk's?

The clerk being intoxicated, I was obliged to send him home.

138. Was the grant ever delivered?

Of course not. It was signed in the same way as I described the other, probably by accident?

139. Can you describe how that could have been signed by accident?

Yes, sir. Every day or so the clerk having grants for signature would place them before me on a table to sign. Sometimes there were one, or two, or three, or four of these grants; and we had but one drawer to keep everything in; so that it was possible for this grant to be signed in this manner. Under these circumstances, it is very likely that I signed the grant.

140. You are certain that you signed that grant?

I see my own handwriting there.

141. Is all on that page of that grant in your handwriting?

Yes, sir.

142. In 1847 you were alcalde, ad interim.

Yes, sir.

143. Where was Mr. Bartlett then?

He was a prisoner, but returned about the 12th of January, and resumed the duties of his office 20th of January, 1847?

144. In whose handwriting is the words "not taken," marked in the entry to lot 254?

In Mr. Bartlett's writing.

(This is herein contained below.)

145. Do you know when he wrote that?

After his return, about ten days or two weeks.

146. Do you recollect when he made those marks? On his return from captivity did he resume the duties of his office?

A few days after his return he resumed the duties of his office.

147. I will ask you a question about a grant made by Bryant to Alfred Edmondson. Do you find any memorandum made by you of that?

I find a memorandum made in my handwriting, and signed by myself.

41 148. Look at page 106, and what do you find there?

I find a memorandum unsigned, and an erasure. (This is found below.)

149. Who had the grant been signed by?

By Mr. Bryant.

150. The petition for another lot; in whose handwriting is it?

It is in Mr. Buchanan's handwriting, but there is no signature to it.

151. Turn to page 363. Do you find a clean grant there?

Yes, sir. (This is found below.)

152. In March 13th, 1847, lot 322 was granted to Alexander Hatler?

Yes, sir.

153. Is that a clean record?

It is, with the exception of a memorandum.

154. What's that?

(Witness here read the memorandum.)

155. Did you afterwards grant that lot?

I should think I did.

156. Do you recollect to whom?

I cannot say.

157. Look at July 8th, 1847; same lot No. 322; was that granted by you?

Yes, sir.

158. By the same number?

It seems so.

159. What page is that?

Page 168. I granted it to F. Lard.

160. Did you state that you had signed the Donner entry?

I stated that I had no independent recollection of having signed it, but seeing it in the book before me, I have no doubt that I did.

161. As to your recollection now, do you remember of having signed it at all?

I have no direct recollection of it, except the paper before me, and from surrounding circumstances. I recollect about that date the office was written to as to this identical lot, or may be, both lots of the Donner children.

162. Have you any recollection at that time of seeing that grant signed?

I cannot say that I have.

163. Did you ever at thattime make grants of lots to parties without delivering to them a paper which you call an original grant?

42 I think not.

164. Did you ever deliver those grants without the fees having been first paid?

I cannot call to mind any particular case of that kind; therefore, I suppose not.

165. Therefore, you suppose not?

Yes, sir.

166. When the fees were paid into the office, did you keep any account book or memorandum of it?

Yes, sir, the clerk did.

167. Was that kept under your direction and control?

Yes, sir.

168. Where is that account book?

Here it is, sir.

169. Does that book refer to the time of these transactions?
Yes, to the 19th of July, 1847, before and after.
170. If the fees had been paid, would it appear on that book?
It ought to.
171. Can you find any entry there of their having been paid?
I think not, sir.
172. You have heretofore examined that book for the purpose of ascertaining if there was any corresponding entries made?
I did at the former trial, and no entries were found.
173. To what accounts did you carry the funds?
To the account of the alcalde's office, as public funds.
174. Were they so received and charged by you?
Yes, sir.
175. Was the account book in which it should have been entered correctly kept?
It seems not.
176. Was it designed to be correctly kept?
It was designed to be correctly kept.
177. Were these accounts kept under your supervision?
Of course, they would be.
178. Did you have a settlement with the town in regard to those accounts at that time?
Yes, sir.
179. Did you settle according to that book?
Yes, sir.
180. Have you any other books in which there are entries made in reference to the Donner funds?
43 There was a receipt book which I found on a former trial containing two receipts for five or ten dollars.
181. Have you got that book?
No, sir; it is not in my possession, it is now in this court; it was placed under the court's authority at the time of the last trial.
182. Can you inform me what that book is called?
It is simply called a receipt book.

Redirect examination:

183. Do you know whether these moneys were paid to you or Mr. Bryant?
I think they were originally paid to Mr. Bryant.
184. Would they get into your account books in that case?
No, they would not get into my accounts as alcaldes.
185. Do you remember how much moneys there were?
Five and six, or eight dollars.
186. Do you know whether the amount of money sufficient to pay for the fees for Donner's lot was made up?
I don't remember anything about that. I know something was positively done before I became alcalde.
187. Do you remember, generally, whether you signed any grants, and which ones?
Some few of them.

188. How many grants do you suppose you made?

Nearly five hundred, I suppose.

189. It would be something extraordinary if you would remember the number.

Yes, sir; I should think so.

190. Now, you say you have no direct recollection or impresssion of having signed it.

I have an impression, but no direct recollection.

191. What do you mean by no direct recollection?

I have no direct recollection; but from the surrounding circumstances, I have no doubt but I signed my name to it. The surrounding circumstances were these; I remember that the office was written to in regard to this grant, to the issuance of it. The other circumstances were probably nothing more than furnishing the means for the benefit of the emigrants. It runs also in my mind that I done something myself in reference to the fees, but I can't call to mind with sufficient distinctness that I paid the fees to the office. I cannot positively say that I did so, but I have some recollection of the
44 fact. From the circumstances, I draw the conclusion that I signed the grant.

192. Your attention was called to the color of the ink on page 179, and that shown by the head note thereto, and the signature—is it not also a fact that the body of the writing is in the handwriting of Buchanan, and the other is in your handwriting?

Yes, sir.

193. Do you say that the head note is in your handwriting?

I think so, as also the signature; and the body of the entry is in the handwriting of Mr. Buchanan, the clerk. There is not so much difference between the shades, the one appears to be written a little heavier than the other.

194. You speak of there being a special fee or a municipal fund; you don't mean to convey the idea that you waived the municipal fund—you don't mean to convey the idea that you waived the municipal fee?

No, sir; only the fees of my office.

195. What was that fee—the municipal fee?

Twenty-five dollars.

196. What the entire fee?

Twenty-eight dollars and a bit.

197. Have you any recollection of having contributed to the fund for these children?

When the occurrence took place I recollect that I gave all I could rake and scrape together.

198. Do you recollect how much it was?

I recollect of giving fifty or sixty dollars—forty in coin and forty in groceries and provisions. The amount I gave for the special purpose of getting the lot I don't know.

199. I ask you, whether in a former trial you didn't state that you had no recollection other than the fees of office?

Nor have I now.

Alfred Wheeler, having been sworn for plaintiff, he was requested to look at book A, of original grants, at page 179, and the entry therein made—a copy of which is herein contained as to the hundred vara lot No. 39. And he testified that he was employed by the city authorities, and made a report on alcalde grants in 1850, and had occasion to use book A, of original grants at that time, and that the entry referred to on page 179 was then entered on said page as it now appears, signed by George Hyde.

The plaintiff then proved that the premises in question are situated within what is known as the former pueblo of San Francisco.

45 Samuel Brannan, being then called and sworn as a witness, on behalf of the plaintiff, testifies as follows:

199. Will you look at the second entry on page 179 of that book (pointing to book A, original grants) and state if you ever saw it before; and if you did, where and when?

I have seen it before; yes, sir.

200. State when you saw it.

I saw it in the month of Septemher or October, 1847.

201. Was the signature of George Hyde there at that time?

It was, sir.

202. Do you know anything about a contribution being taken up for the Donner children at that time?

When the children were brought in about the early part of spring, there was talk of taking up a subscription to pay for a lot for them, and a considerable sum of money was raised tor that purpose. I was asked by Mr. Leidesdorff to contribute. I told him I would do so. Sometime before I left in April I either handed to him or some other person my subscription.

203. Was that for the purpose of paying for the lot?

Yes, sir.

204. Could you state the amount of your subscription?

No, I could not state the amount; it might be two, or three, or five dollars, I could not tell.

205. (A paper here marked Exhibit A, was here shown to witness.) Have you seen that paper before?

I have seen it before, but I cannot identify it. It resembles it.

206. Where did you see it?

I saw it in San Francisco.

207. Was it in the condition then as now?

I could not tell.

208. Could you state if there was any signatures to it?

I could not tell. I am under the impression that there was.

209. I understand you to say that after you had contributed some money to this fund you left for the mountains?

Yes, I left on the fifteenth of April, and returned in September of the same year.

210. You say that you saw that paper on your return?

No; I say this, on looking over the books I saw this entry, and immediately remarked to the clerk, "Well, you have raised the money for Donner, and given him the lot."

46 Cross-examination:

211. This paper, marked Exhibit A, you speak of having seen before; do you refer to the previous trial of this case, or what occasion?

I don't recollect particularly.

212. Can you state whether you have seen it in a recent period of time?

I have not seen it very lately.

213. Can you state when you first saw it?

I could not state when I first saw it.

214. You don't mean to say you saw it in early times, do you?

I may have seen it; I could not distinctly say when.

215. Have you ever seen it before, in any litigation?

I think I have.

216. Do you remember what year?

I cannot tell.

217. Don't you know that there was litigation in 1858, in which it was produced?

I don't remember.

218. Have you any recollection of having seen it five years ago?

I could not say.

219. Did you not testify in the case that was tried before Mr. Treadwell, as referee in 1858?

Probably I did.

220. Do you know Mr. Treadwell, the referee in that case?

I believe I do.

221. Did you see this paper before?

Yes, I think I saw it in the hands of Mr. Gould; I think Mr. Gould showed it to me at the time of the trial.

223. Who was Mr. Gould acting for?

For the plaintiff.

224. I understand that it was to Leidesdorff you paid your contribution for the Donner fund?

It might have been to Leidesdorff, or Bryant, who was alcalde.

225. What is your recollection?

Leidesdorff spoke to me first about taking out the grant, and asked me if I was willing to do something for it. I told him that I was. This was before I went away. I may have paid the amount to Bryant, or it might have been to Leidesdorff. I had some business with both of them.

47 226. Do you recollect if that entry to Mary Donner was in the same condition as it is now?

I do not know what condition it is in now.

227. Do you see the entry to Mary Donner's lot?

Yes; I think it is in Buchanan's handwriting.

228. Do you remember whether that mark was across it or not?

I don't recollect; my impression is there was no mark across it. I could not testify positively.

229. Do you recollect when you went to the country?

I went in April.

230. Do you recollect whether Mary and George Donner had then arrived in the city?

I am not positive.

231. What is the best of your recollection on the subject?

That is the best of my recollection.

232. Did you go out with the rescuing party?

No; I met some of them coming in.

233. When did you return?

I returned in December.

234. Have you any knowledge where they went to?

Some of them came down to San Francisco; some of them were at the fort.

235. Did they arrive in your absence?

Some of them did.

236. Do you remember now whether this party had come into the settlements of California when you went to the mountains?

I met the last of them coming in at Bear river, Sutter's fort.

237. How long were you in going from San Francisco to where you met them?

I was from the fifth to the middle or latter part of April.

(The paper marked Exhibit A was not offered or read in evidence.)

Second day.

THURSDAY, *August 11th*, 1864.

Plaintiff here offered an entry on page 179, "Book A, of original grants," which is as follows, viz:

Lot No. 39.

"Whereas, George Donner has presented a petition soliciting for the grant of a title to a lot of ground as therein described: 48 therefore, I, the undersigned, alcalde, do hereby give, grant, and convey unto the said George Donner, his heirs and assigns forever, lot number thirty-nine, (39) containing one hundred varas square, in the vicinity of the town of San Francisco, subject to all the rules and regulations governing in such cases.

In testimony whereof, I have hereunto set my hand, as alcalde, this nineteenth day of July, A. D. 1847.

GEORGE HYDE, 1*st Alcalde.*"

In introduction of which in evidence defendant's counsel objected to as follows:

Defendants objected on the ground that it is not primary evidence, or the best evidence, of any grant having been made and delivered to George Donner. It is at best secondary evidence.

That there has been no evidence to lay the foundation for the introduction of this secondary evidence. That there has been no proof of the loss or destruction of the original instrument, of which the entry on page 179 is a mere memorandum.

That the entry in "Book A, of original grants," at the page indicated, is a mere memorandum, made by the alcalde in pursuance of a system upon which the book was kept, which system was inaugurated by Washington A. Bartlett, as appears on page 191 of that book; and this entry would indicate nothing more than that the original grant might have been issued in pursuance of that system.

That the evidence from the book itself, from the various portions to which Mr. Hyde's attention has been called, shows that this is not an original grant, or intended as a muniment of title.

That the evidence already before the court shows that this is not an original grant, or an original paper. That if this book is offered as a book kept according to the rules of Mexican law, which then prevailed, it is not kept in accordance with that law, but is deficient in several important particulars of that law. The grant should have been made and signed by both parties, the grantor and the grantee, and should have been attested by parties as witnesses of the fact.

That the whole proceeding should have been set out on that book. That if it be a mere memorandum book, it is indicative merely that there was some other instrument which had to be executed and delivered, and which is primary evidence in the case.

49 The objection was overruled by the court, and exception taken by the counsel for defendants then and there.

George Hyde, being recalled, was further examined, and testified as follows:

238. You speak of some book in which some receipts were written, where is that book?

I don't know.

239. Have you attempted to find it?

I went to the county clerk's office yesterday afternoon for that purpose, but could not find it.

240. Do you know where it is?

I have not the slightest knowledge.

241. What is it called?

It is called a receipt book; it had some loose receipts and some written ones on its pages.

242. Will you state to what extent you made a search for it?

I went to the office and made inquiry for it.

243. Did you make a diligent search for it?

I did not take any great length of time.

244. How does it happen that on the nineteenth of July, if there was a lot No. 39 designed on a map south of Mission street, it is described as a lot near San Francisco?

I think that it was merely the form that was used in all the grants made in that locality.

245. What reason have you for having used that form?

The map was not considered as a plan of the town; the grants were designated as in the vicinity of the population.

246. Is it not known to you that grants were made near the town that were not designed by number?

Yes, sir?

247. What reason have you to know from your own recollection or otherwise, that the heading of that entry, lot No. 39, was actually placed there by you when you placed your signature to it?

I suppose from the similarity of style and my mode of joining words together.

248. Turn me, then, to some similar words that resemble it.

It may be very difficult. (After searching for a while the witness turned to page 153, where the word "lot" was so written.)

249. Is the letter "L" so written?

The capital "L" is not, but the other letters are.

250. Carrying back your recollection to that period, were you in the habit of writing the capital "L" differently at different times, or were you in the habit of writing it in the same way?

I cannot say.

251. Is not the capital letter written in the same way by most persons?

Yes, sir.

252. I ask you if the letter "L" at the head of the entry is not made in the same style as it is made in the same entry by Buchanan?

There is some strong similarity.

253. Direct me to a single place where the letter "L" resembles that written by Buchanan.

I think here is one (pointing to page 165) in which the letter "L" in the word "Lincoln" resembles the letter "L" in the word "Lot," on page 179.

254. By the court: In the entry on page 179, does not the letter "L" start inside the body of the letter instead of the outside?

I think so.

(The court here desired the reporter to note the explanation of witnesses as follows: "He thinks the letter "L" in the word "Lot" on the entry on page 179 corresponds with the letter "L" written on page 165, in the word "Lincoln," which he thinks to be in Buchanan's handwriting.)

255. By Dwinelle: Independent of any book or paper, do you remember a tier of 100 vara lots north of Market street?

Yes, sir.

256. Do you remember when they were canceled?

I know they were canceled by Judge Bryant prior to the second time I came into office.

(The cross-examination was here suspended by leave of court, to enable him to make search and inquiry for the receipt book, after which he was recalled, and his cross-examination resumed, as follows:

257. Have you found the receipt book mentioned this morning?

I have not found it.

258. What amount of money did you receive from Mr. Bryant as contributions to the Donner children?

(This question was again objected to by the plaintiff's counsel, but subsequently he waived the objection.)

259. Mr. Hyde, did you ever receive from Mr. Bryant any fund on account of the Donner children?

51 I did, sir.

260. How much?

The fund I received amounted to about thirteen dollars ($13 00).

261. How many of those children were there?

Two; the plaintiff and his sister.

262. Was this a joint or separate fund?

It was a separate fund.

263. How much was there for Mary?

Either five or eight dollars.

264. What time did you receive that?

About the first of June, 1847.

265. Have you any recollection of any other fund paid to you by any other person on account of these children?

I have not.

266. Were these the funds you refer to as having been entered in the receipt book?

Yes, sir.

267. In your account book which you kept in the office during the period of your alcadeship, is there any charge or any memorandum against you for this lot?

I did not look, but upon the last trial I think there was not.

268. From your examination are you not satisfied?

I think that is a fact.

Redirect examination:

In that account book, was there any entry of the money you received?

No.

270. By whom was the account made out?

By the clerk of the office.

271. What do you say now about the fees having been paid before you signed the grant?

What I stated yesterday was as to my habit of never signing the record until after the money was paid.

272. Did you ever vary?

There may be some exceptions, but they are very rare.

273 Do you know of any exceptions?

I cannot call any to mind. The peculiarity of some cases might make it necessary to do so. In order to illustrate or point out one definitely, I can not.

274. Did Mary Donner get any grant?

No, sir; she got none.

52 275. By the court: Have you any reason to believe that the grant was ever issued without the fee having been paid?

I have no reason to believe any such thing.

276. By the court: How do you account for the absence of such a charge in the book?

It is impossible for me to account for it, except that it occurred through a mistake of the clerk, or some omission of that sort.

277. By the court: What reason have you to believe that the fee was paid?

My signature being appended to the entry.

It was admitted on the part of the defendants, that they have been severally in possession of the respective portions of the demanded premises, as described by them in their answers, since February, 1852.

Thereupon plaintiff rested.

The defendants, by their attorney, moved the court to nonsuit the plaintiff on the following grounds:

1st. That no evidence has been given tending to prove title or right of possession to the plaintiff.

2d. That there is no evidence tending to prove that the alleged grant ever was delivered, or was in the possession of plaintiff, or any person, for his use.

3d. That there is no evidence tending to prove that the municipal fees were ever paid by the grantee, or any person on his behalf, to the alcalde, or any other person, for the benefit of the town.

4th. That there was no power in the alcalde to make the grant, without the payment of the municipal fees.

5th. That the "Book A of original grants," offered in evidence, contains evidence in itself, that if the plaintiff had a grant, it was evidenced by a distinct paper title, which should have been produced, and the absence of which he has not accounted for.

6th. And, also, that it appears by the evidence, that the plaintiff has no cause of action; whatever cause he might have had being barred by the statutes of limitation.

Counsel subsequently added, as an additional ground for nonsuit, as follows:

8th. That it is distinctly averred in the pleadings on the part of the plaintiff, that the particular grant in question was delivered to one McDonald, who was then acting in the capacity of guardian for plaintiff; but there is no evidence of that fact, although the
53 plaintiff deraigns his title to the lot from that source.

The court denied the motion for non-suit; to which ruling the defendants' counsel then and there excepted.

It was admitted by the defendants, on motion for a non-suit, that this action was commenced within five years after the plaintiff had attained his majority.

The further hearing of the case was adjourned to Monday, August 15th, 1864.

MONDAY, *August 15th*, 1864.

It is stipulated in open court, between plaintiff and defendants, and the intervenor in this cause, that the trial of the intervention herein, and the disposition of the same, shall be made by the court on an agreed statement of facts, to be entered into, in writing,

between the plaintiff and the intervenor, but which agreement of facts shall in no way involve or put in question any of the rights of defendants, as disclosed on the trial.

The defendants, by their attorney, then read in evidence, and exhibited to the court and jury the following entries in "Book A of original grants," hereinbefore referred to; that is to say, the said entries on pages 191 and 192, hereinabove referred to, and also the following, viz.:

[Book A of original grants, page 179.]

Whereas, Mary Donner has presented a petition soliciting for the grant of a title to a lot of ground, as herein described; therefore, I, the undersigned alcalde, do hereby give, grant, and convey unto the said Mary Donner, her heirs and assigns, forever, lot No. 38, containg one hundred varas square, in the vicinity of the town of San Francisco, subject to all the rules and regulations governing in such cases.

In testimony whereof, I have hereunto set my hand, as alcalde, this nineteenth day of July, A. D. 1847.

This lot, No. 38, has been granted to James C. Ward. Recorde on page 120.

J. C. BUCHANAN.

Upon this entry there are cross-marks of cancellation.

54 [Book A of original grants, page 165.]

Lot No. 367, *granted to Seth Smith Lincoln.*

MAGISTRATE'S OFFICE, SAN FRANCISCO.

This is to certify, that on the first day of July, A. D. 1847, I, George Hyde, alcalde of the district of San Francisco, by virtue of my office, have granted, ceded, conveyed, and confirmed unto Seth Smith Lincoln, a citizen of Calfornia, lot No. 367, (three hundred and sixty-seven,) in the town of San Francisco, containing fifty varas square; and gave unto the said Seth Smith Lincoln, his heirs and assigns, a full and valid title unto said lot No. 367, under the forms and conditions set forth in the title, and recorded in this register; and that I put the said Seth Smith Lincoln in full and quiet possession of the said lot 367, and record the same for his security.

GEORGE HYDE,
First Alcalde.

Copied in book No. 2, certified grants, page 210.

[Book A of original grants, page 175.]

Lot No. 182, *granted to John Owens.*

MAGISTRATES'S OFFICE, SAN FRANCISCO.

This is to certify, that on the sixteenth day of July, A. D. 1847, I, George Hyde, alcalde of the district of San Francisco, by virtue of my office, have granted, ceded, conveyed, and confirmed unto John Owens, a citizen of California, lot No. one hundred and eighty-two, (182,) in the town of San Francisco, containing fifty varas square; and gave unto the said John Owens a full and valid title unto the said lot 182, under the forms and conditions set forth in the title, and recorded in this register; and that I put the said John Owens in full and quiet possession of said lot 182, and record the same for his security.

GEORGE HYDE,

[Not taken.] *First Alcalde.*

Upon this entry there are cross-marks of cancellation.

[Book A of original grants, page 153.]

Whereas, George McDonald has presented a petition soliciting
55 for the grant of a title to a fractional lot No. 695, in the town of San Francisco, as therein described; therefore, I, the undersigned, alcalde, do give, grant, and convey unto the said George McDonald, his heirs and assigns, forever, fractional lot No. 695, bounded as follows: Lying fifty varas on Sansom street, commencing at the north-west corner of Sansom and Pine streets; thence south fifty varas; thence east fifty varas; thence north fifty varas; thence west eighteen varas; thence north ten varas; thence west thirt-two varas, to the north-west corner of the lot. Said lot being subject to all the rules and regulations governing in such cases.

In testimony whereof, I have hereunto set my hand, as alcalde, this 10th January, 1847.

GEORGE HYDE,
First Alcalde.

The deed to this lot being found invalid was recalled by the alcalde, and is hereby erased from the records.

GEORGE HYDE,
First Alcalde.

There are cross-marks of cancellation upon this entry, and the word "Erased" written on it.

[Book A of original grants, page 153.]

Whereas, Jno. C. Buchanan has presented a petition soliciting for the grant of a title to the fractional lot of land as therein described; therefore, I, the undersigned, alcalde, do hereby give, grant, and convey unto the said Jno. C. Buchanan, his heirs and assigns forever, lot No. 207, (two hundred and seven,) marked on the plan or map of

the town of St. Francisco, being fifty-seven varas deep by twenty-five front, fronting on California street. Such lot being subject to all the rules and regulations governing in such cases.

In testimony whereof, I have hereunto set my hand as alcalde, of this twelfth day of June, 1847.

GEORGE HYDE,
First Alcalde.

The title-deed for the above lot, 207, withdrawn, being a beach lot.

GEORGE HYDE,
First Alcalde.

Upon this entry there are cross-marks of cancellation.

56 [Book A of original grants, pages 237 and 228.]

To GEORGE HYDE, *Alcade of the District of San Francisco:*

The undersigned, your petitioner, respectfully represents that he is a citizen of California, as declared by the proclamation of Commodore Robert F. Stockton, dated August 17th, 1846; and whereas, your petitioner is desirous of taking up a lot of ground in the town of Yerba Buena, suitable for the construction of a residence, etc., etc., he prays that you will grant him a title to lot No. 254, containing fifty varas square, as marked on the plan of the said town now in your office, according to the customs and conditions prescribed by the laws of California and the rules and regulations of said town.

On this paper for want of sealed.

his
JOHN KITTLEMAN.
mark.

YERBA BUENA, *Dec. 36th*, 1846.

[Not taken.]

Whereas, John Kittleman has duly presented me, the undersigned, alcalde, and presented the within petition soliciting to have granted a title to lot No. 254, (two hundred and fifty-four) of fifty varas square, as marked on the plan of the town of Yerba Buena, now in my office; I, the undersigned, alcalde, do hereby give, grant and convey the said lot aforementioned unto the said John Kittleman and his assigns forever, on the following conditions:

1st. That he or his assigns shall build or erect on said premises a house or dwelling within a year from the date of these presents.

2d. That he or his assigns shall put or cause to be put a suitable fence thereon.

3d. To be subject to all the laws and regulations of the town.

In witness whereof, I, the alcalde, have hereunto set my hand and subscribed my name this twenty-eighth day of December, 1846.

GEORGE HYDE, *Alcalde.*

[Not taken.]

Received payment for the within deed the sum of fifteen dollars and five reals in full, this twenty-eighth day of December, A. D. 1846.

PEDRO T. SHERREBECK, *Collector.*

57 The above petition and grant are marked by cross lines of cancellation, and the words "not taken" written twice on the margin.

[Book of original grants, pages 222, 223 and 224.]

To GEORGE HYDE, *Alcalde of the District of San Francisco*:

Your petitioner being a citizen of California, according to the proclamation of his excellency Commodore Robert F. Stockton, and a resident of the aforesaid district, would respectfully solicit for the grant of a title to a lot of land containing one hundred varas square in the vicinity of the town of Yerba Buena, on the north side of Mission street or road, upon which he intends to erect a dwelling house. according to the rules and regulations governing in such cases, and desires that you will give immediate possession thereof.

GEORGE HYDE.

YERBA BUENA, January 2d, 1847.

[Not taken.]

Whereas, George Hyde has presented the foregoing petition, soliciting for the grant of a title to a lot of land in the vicinity of Yerba Buena, containing one hundred varas squares, as therein described; therefore, I, the undersigned, alcalde, hereby give, grant and convey the said lot unto the said George Hyde, his heirs and assigns forever, subject to the following conditions.

1st. That said George Hyde, his heirs and assigns shall erect or cause to be erected, a dwelling house on the said premises within one year from the date of these presents.

2d. That the said George Hyde, his heirs and assigns shall inclose or cause to be inclosed the said lot with a suitable fence.

3d. And to be subject to all the rules and regulations governing in such cases.

In testimony whereof, I have hereunto set my hand and subscribed my name as alcalde, this twelfth day of January, A. D. 1847, in the town of Yerba Buena.

GEORGE HYDE,
Alcalde.

Witnesses present:
WILLIAM LEIDESDORFF.
CHARLES MEYER.

Upon the above petition and grant are cross-marks of cancellation.

58 [Book A of original grants, page 106.]

Lot 619, *granted J. G. Haskell.*

MAGISTRATE'S OFFICE, SAN FRANCISCO.

This is to certify, that on the fourth day of May, A. D. 1847, I, Edwin Bryant, Alcalde or Chief Magistrate of San Francisco, by virtue of my office, have granted, ceded, conveyed and confirmed

unto J. G. Haskell, a citizen of California, lot No. 619 in the town of San Francisco, containing fifty Spanish varas square, and gave unto the said J. G. Haskell, his heirs and assigns, a full and valid title unto said lot No. 619, under the forms and conditions set forth in the title, and recorded in this register; and that I put the said J. G. Haskell in full and quiet possession of said lot 619, and record the same for his security.

EDWIN BRYANT,
Chief Magistrate.

Haskell has petitioned for another lot.

Upon this grant is a cross-mark of cancellation.

[Book A of original grants, page 324.]

Lot 272, *granted to Alfred Edmonson.*

CHIEF MAGISTRATE'S OFFICE, SAN FRANCISCO.

This is to certify, that on the seventeenth day of March, A. D. 1847, I, Edwin Bryant, Alcalde or Chief Magistrate of San Francisco, by virtue of my office, have granted, ceded, conveyed and confirmed unto Alfred Edmonson, a citizen of California, lot No. 272 (two hundred and seventy-two) in the town of San Francisco; said lot being fifty Spanish varas square; and gave unto the said Alfred Edmonson, his heirs and assigns, a full and valid title unto said lot two hundred and seventy-two, (272,) under the forms and conditions set forth in the title and recorded in this register; and that I put the said Alfred Edmonson in full and quiet possession of said lot two hundred and seveny-two, and record the same for his security.

EDWIN BRYANT,
Chief Magistrate.

[See Ante, page 217.]

This deed void—the lot previously granted by W. Bartlett.

GEORGE HYDE,
First Alcalde.

Upon this grant are cross-marks of cancellation.

59 [Book A of original grants, page 227.]

Lot No. two hundred and nineteen, (219,) *Granted to Peter Lassen.*

CHIEF MAGISTRATE'S OFFICE, SAN FRANCISCO.

This is to certify, that on the twenty-sixth day of February, 1847, I, Edwin Bryant, Alcalde of St. Francisco, by virtue of my office, have granted, ceded, conveyed and confirmed unto Peter Lassen, a citizen of California, the lot No. 219 (two hundred and nineteen) in the town of St. Francisco, said lot being fifty Spanish varas square; and gave unto the said Peter Lassen, his heirs and

assigns, a full and valid title unto said lot two hundred and nineteen, (219) under the forms and conditions set forth in the title, and recorded in this register; and that I put the same Peter Lassen in full and quiet possession of said lot (219) two hundred and nineteen, and record the same for his security.

EDWIN BRYANT,
Chief Magistrate.

Copied in book No. 2, certified grants, page 122.

[Book A of original grants, page 108.]

Lot 609, *granted to William Atherton.*

MAGISTRATE'S OFFICE, ST. FRANCISCO.

This is to certify, that on the fourth day of May, A. D. 1847, I, Edwin Bryant, Alcalde or Chief Magistrate of St. Francisco, by virtue of my office, have granted, ceded, conveyed and confirmed unto William Atherton, a citizen of California, lot No. 609 (six hundred and nine) in the town of San Francisco, containing fifty varas square; and gave unto William Atherton, his heirs and assigns, a full and valid title unto said lot 609, under the forms and conditions set forth in the title and recorded in this register; and that I put the said William Atherton in full and quiet possession of said lot 609, and record the same for his security.

EDWIN BRYANT,
Chief Magistrate.

Copied in book No. 2, certified grants, page 408.

60 [Book A of original grants, page 363.]

Lot No. 365, *granted to John Callaghan.*

MAGISTRATE'S OFFICE, ST. FRANCISCO.

This is certify, that on thirtieth day af April, A. D. 1847, I, Edwin Bryant, Alcalde or Chief Magistrate of San Francisco, by virtue of my office, have granted, ceded, conveyed, confirmed unto John Callaghan, a citizen of California, lot No. 365 (three hundred and sixty-five) in the town of St. Francisco, containing fifty Spanish varas square; and gave unto the said John Callaghan, his heirs and assigns, a full and valid title unto said lot No. 365, under the forms and conditions set forth in the title, and recorded in this register; and that I put the said John Callaghan in full and quiet possession of said lot 365, and record the same for his security.

EDWIN BRYANT,
Chief Magistrate.

Copied in book No. 2, certified grants, page 208.

(Book A of original grants, page 168.]

Lot No. 322, *granted to F. Lard.*

MAGISTRATE'S OFFICE, SAN FRANCISCO.

This is to certify, that on the eighth day of July, 1847, I, George Hyde, Alcalde of the district of San Francisco, by virtue of my office, have granted, ceded, conveyed, and confirmed unto F. Lard, a citizen of California, lot number three hundred and twenty-two, in the town of San Francisco, containing fifty varas square, and gave unto the said F. Lard, his heirs and assigns, a full and valid title unto the said lot No. 322, under the forms and conditions set forth in the title recorded in this register; and that I put the said F. Lard in full and quiet possession of said lot 322, and record the same for his security.

GEORGE HYDE.
First Alcalde.

Copied in book No. 2, certified grants, page 175.

In the above grant the number 323 in the original seems to have been changed to 322.

61 [Book A, of original grants, page 293.]

Lot two hundred and fifty four, (254,) granted to William H. C. Fleet.

CHIEF MAGISTRATE'S OFFICE, ST. FRANCISCO.

This is to certify that on the fourth day of March, A. D. 1847, I, Edwin Bryant, alcalde or chief magistrate of St. Francisco, by virtue of my office, have granted, ceded, conveyed, and confirmed unto William H. C. Fleet, a citizen of California, lot number two hundred and fifty-four, (254.) in the town of St. Francisco, said lot being fifty Spanish varas square; and gave unto the said William H. C. Fleet a full and valid title unto the said lot No. (254) two hundred and fifty-four, under the forms and conditions set forth in the title and recorded in this register; and that I put the said William H. C. Fleet in full and quiet possession of said lot number two hundred and fifty-four, and record the same for his security.

EDWIN BRYANT,
Chief Magistrate.

This lot has been forfeited, the amount due, $5 62, having been paid, and the purchaser permitted to petition for lot 155, which has been granted by

EDWIN BRYANT, *Alcalde.*

Upon the above grant are cross-marks of cancellation.

[Book A, of original grants, page 136.]

Lot No. 254, *granted to Rowland Gilston.*

MAGISTRATE'S OFFICE, SAN FRANCISCO.

This is to certify, that on the third day of June, A. D. 1847, I, George Hyde, alcalde or chief magistrate of St. Francisco, by virtue of my office, have granted, ceded, conveyed, and confirmed unto Rowland Gilston, a citizen of California, lot number two hundred and fifty-four, (254,) in the town of San Francisco, containing fifty varas square, and gave unto the said Rowland Gilston, his heirs, and assigns, lot No. 254, under the forms and conditions set forth in the title, and recorded in this register; and I put the said Rowland Gilston in full and quiet possession of said lot, (254,) and record the same for his security.

GEORGE HYDE, 1*st Alcalde.*

62 Rowland should have been written Roland.

JNO. C. BUCHANAN, *C'lk.*

Copied in book No. 2, certified grants, page 142.

[Book A, of original grants, page 350.]

MAGISTRATE'S OFFICE, SAN FRANCISCO.

This is to certify, that on the seventh day of April, A. D. 1847, I, Edwin Bryant, alcalde or chief magistrate of San Francisco, by virtue of my office, have granted, ceded, conveyed, and confirmed unto Henry Harms, a citizen of California, lot number two hundred and eighty-four, (284,) in the town of San Francisco, said lot being fifty Spanish varas square, and gave unto the said Henry Harms, his heirs and assigns, a full and valid title unto said lot numbered two hundred and eighty-four, under the forms and conditions set forth in the title, and recorded in this register; and that I put the said Henry Harms in full and quiet possession of said lot 284, and recorded the same for his security.

EDWIN BRYANT,
Chief Magistrate.

[Book A, of original grants, page 323.]

Lot No. 41, *to James Greyson.*

CHIEF MAGISTRATE'S OFFICE, SAN FRANCISCO.

This is to certify, that on the sixteenth day of March, A. D. 1847, I, Edwin Bryant, alcalde or chief magistrate of San Francisco, by virtue of my office, have granted, ceded, conveyed, and confirmed unto James Greyson, a citizen of California, lot number forty-one, in the town of San Francisco said lot being fifty Spanish varas square, and gave unto the said James Greyson, his heirs and assigns, a full and

valid title unto said lot number forty-one, (41,) under the forms and conditions set forth in the title, and recorded in this register; and that I put the said James Greyson in full and quiet possession of said lot number forty-one, (41) and record the same for his security.

EDWIN BRYANT,
Chief Magistrate.

Copied in book No. 2, certified grants, page 23.

63 [Book A, of original grants, page 321.]

Lot No. 125, *granted to Robert Roberts.*

CHIEF MAGISTRATE'S OFFICE, ST. FRANCISCO.

This is to certify, that on the fifteenth day of March, A. D. 1847, I, Edwin Bryant, alcalde or chief magistrate of St. Francisco, by virtue of my office, have granted, ceded, conveyed, and confirmed unto Robert Roberts, a citizen of California, lot number one hundred and twenty-five, (125,) in the town of San Francisco, said lot being fifty varas square, under the forms and conditions set forth in the title, and recorded in this register; and gave unto the said Robert Roberts, his heirs and assigns, a full and valid title unto said lot one hundred and twenty-five, (125,) and that I put the said Robert Roberts in full and quiet possession of said lot number (125) one hundred and twenty-five, and record the same for his security.

EDWIN BRYANT,
Chief Magistrate.

Copied in book No 2, certified grants, page 73.

[Book A, of original grants, page 346]

Lot No. 263, *granted to McKenzie Beverly.*

MAGISTRATE'S OFFICE, ST. FRANCISCO.

This is to certify, that on the thirtieth day of March, A. D. 1847, I, Edwin Bryant, alcalde or chief magistrate of San Francisco, by virtue of my office, have granted, ceded, conveyed, and confirmed unto McKenzie Beverly, a citizen of California, lot No. (263) two hundred and sixty-three, in the town of San Francisco, said lot being fifty Spanish varas square, and gave unto the said McKenzie Beverly, his heirs and assigns, a full and valid title unto said lot No. 263, under the forms and conditions set forth in the title, and recorded in this register; and that I put the said McKenzie Beverly in full and quiet possession of said lot (263) two hundred and sixty-three, and record the same for his security.

EDWIN BRYANT,
Chief Magistrate.

Copied in book No. 2, certified grants, page 146.

64 [Book A, of original grants, page 101.]

Lot No. 371, *granted to George McDougall.*

MAGISTRATE'S OFFICE, ST. FRANCISCO.

This is to certify, that on the first day of May, A. D. 1847, I, Edwin Bryant, alcalde or chief magistrate of St. Francisco, by virtue of my office, have granted, ceded, conveyed, and confirmed unto George McDougall, a citizen of California, lot number three hundred and seventy-one, (371,) in the town of San Francisco, containing fifty Spanish varas square, and gave unto the said George McDougal, his heirs and assigns, a full and valid title unto said lot 371, under the forms and conditions set forth in the title, and recorded in this register; and that I put the said George McDougall in full and quiet possession of said lot 371, and record the same for his security.

EDWIN BRYANT,
Chief Magistrate.

Copied in book No. 2, certified grants, page 214.

[Book A, of original grants, page 203.]

Lot No. 73, *granted to Elliott Libby.*

CHIEF MAGISTRATE'S OFFICE, YERBA BUENA.

This is to certify, that on the tenth (10) day of December, A. D. 1846, I, Wash'n Bartlett, alcalde or chief magistrate of San Francisco, by virtue of my office, have granted, ceded, conveyed, and confirmed unto Elliott Libby, a citizen of California, the lot number seventy-three, in the town of Yerba Buena, said lot being fifty Spanish varas square; and gave the said Elliott Libby, his heirs and assigns, a full and valid title to said lot number seventy-three, (73,) under the forms and conditions set forth in the title and recorded in this register, and that I put the said Elliott Libby in full and quiet possession of said lot number seventy-three, (73,) and recorded the same for his security.

WASH'N BARTLETT.
Chief Magistrate.

65 [Book A of original grants, page 367]

Lot No. 387, *granted to George Dohling.*

MAGISTRATE'S OFFICE, ST. FRANCISCO.

This is to certify, that on the thirtieth day of April, A. D. 1847, I, Edwin Bryant, Alcalde, or Chief Magistrate of San Francisco, by virtue of my office, have granted, ceded, conveyed, and confirmed, unto George Dohling, a citizen of California, lot number three hundred and eighty-seven, in the town of San Francisco, containing fifty Spanish varas square; and gave the said George Dohling, his heirs and assigns,

a full and valid title unto said lot 387, under the forms and conditions set forth in the title and recorded in this register; and that I put the said George Dohling in full and quiet possession of said lot 387, and record the same for his security.

EDWIN BRYANT,
Chief Magistrate.

Copied in book No. 2, certified grants, page 227.

Book A of original grants, page 335,]

To EDWIN BRYANT, Esq., *Alcalde of the District of San Francisco*:

Your petitioner, a citizen of California, according to the proclamation of his excellency, Commodore R. F. Stockton, and a resident of the town of San Francisco, would respectfully solicit for the grant of a title to a lot of land, No. 28, containing one hundred varas square, in the vicinity of the town of Yerba Buena, on the south side of Mission road or street, upon which he intends to erect a dwelling-house, according to the rules and regulations governing in such cases, and desires that you will give immediate possession thereof.

J. D. STEVENSON.

Whereas, J. D. Stevenson has presented the foregoing petition, soliciting for the grant of a title to a lot of land in the vicinity of the town of San Francisco, containing one hundred varas square, as therein described: therefore, I, the undersigned, alcalde, do hereby give, grant, and convey, the said lot No. 28, unto the said J. D. Stevenson, his heirs and assigns forever, subject to the following conditions.

1st. That the said J. D. Stevenson, his heirs and assigns,
66 shall erect or cause to be erected, a dwelling house on the said premises, within one year from the date of the presents.

2d. That said J. D. Stevenson, his heirs or assigns, shall inclose, or cause to be inclosed, said lot with a suitable fence.

3d. And be subject to all the rules and regulations governing in such cases. In testimony whereof, I have hereunto set my hand and subscribed my name, as alcalde, this eighteenth day of March, A. D. 1847.

EDWIN BRYANT.
Chief Magistrate.

Not taken out according to law.

GEORGE HYDE.
First Alcalde.

A true copy.

JNO. C. BUCHANAN.
Municipal Clerk.

Upon the foregoing grant and petition there are cross-marks of cancellation.

[Book A original grants, page 330.]

Lot No. 201, *granted to Robert Buckle.*

CHIEF MAGISTRATE'S OFFICE, SAN FRANCISCO.

This is to certify, that on the seventeenth day of March, A. D. 1847, I, Edwin Bryant, Alcalde or Chief Magistrate of St. Francisco, by virtue of my office, have granted, ceded, conveyed, and confirmed, unto Robert Buckle, a citizen of California, lot number two hundred and one, (201,) in the town of San Francisco, said lot being fifty Spanish varas square; and gave unto the said Robert Buckle, his heirs and assigns, a full and valid title, unto said lot number two hundred and one, (201,) under the forms and conditions set forth in the title, and recorded in this register; and that I put the said Robert Buckle in full and quiet possession of said lot No (201) two hundred and one, and record the same for his security.

EDWIN BYRANT,
Chief Magistrate.

This deed, having remained in the office after due notice had been given, is declared void.

GEORGE HYDE,
Alcalde.

Upon this grant is written the word, "Void."

67 [Book A of original grants, pags 162.]

Lot No. 201, *granted to William S. Clark.*

MAGISTRATE'S OFFICE, SAN FRANCISCO.

This is to certify, that on the thirtieth day of June, A. D. 1847, I, George Hyde, Alcalde of the district of San Francisco, by virtue of my office, have granted, ceded, conveyed, and confirmed unto William S. Clark, a citizen of California, lot No. (201) two hundred and one, in the town of San Francisco, containing fifty varas square; and gave unto the said William S. Clark a full and valid title unto said lot 201, under the forms and conditions set forth in the title, and recorded in this register; and I put the said W. S. Clark, his heirs, and assigns, in full and quiet possession of said lot (201,) and record the same for his security.

GEORGE HYDE,
First Alcalde.

Copied in book No. 2, certified grants, page 113.

[Book A of original grant, page 227.]

To GEORGE HYDE, *Alcalde of the District of San Francisco*:

Your petitioner, being a citizen of California, according to the proclamation of Commodore Robert F. Stockton, and a resident of the aforesaid district, would respectfully solicit for a title to a lot of land in the vicinity of Yerba Buena, containing one hundred varas

square on the Mission street or road side, according to the rules and regulations governing in such cases, and desires that you will give immediate possession thereof.

PETER T. SHERREBECK.

YERBA BUENA, *Jan. 12th.* 1847.

Whereas, Pedro Sherrebeck has presented a petition asking for a title to a lot of land containing one hundred varas square in the vicinity of Yerba Buena; I, the undersigned, alcalde, do hereby give, grant, and convey the said lot therein described unto the said Pedro T. Sherrebeck, his heirs and assigns forever, subject to the following conditions.

1st. That the said Pedro T. Sherrebeck, heirs and assigns, shall erect, or cause to be erected, on said premises a dwelling-house within one year from the date hereof.

2d. That the said Pedro T. Sherrebeck, his heirs and assigns,
68 shall inclose, or cause the said to be enclosed, with a suitable fence.

3d. And to be subject to all the rules and regulations governing in such cases.

In testimony whereof, I have hereunto set my hand and subscribed my name as alcalde, this fourteenth day of January, A. D. 1847, in the town of Yerba Buena.

GEORGE HYDE,
Alcalde.

Witnesses present:
JOS. G. T. DUNLEAVY.
R. SEMPLE.

Copied in No. 1, certified grants, page 13.

[Book A of original grants, page 239.]

Whereas, Readding McCoy has presented the foregoing petition, soliciting for a grant of title to lot No. 272, as set forth in the said petition, and according to customs and usages in my office; I, therefore the undersigned, alcalde, do give, grant and convey the said lot of ground, containing fifty varas square unto the said Readding McCoy, his heirs and assigns forever, according to the following conditions:

1st. The said Readding McCoy shall, he or his heirs or assigns, build or erect a dwelling-house on the said lot within one year from the date of these presents.

2d. He, the said Readding McCoy, his heirs or assigns, shall enclose, or cause to be enclosed, the said lot with a suitable fence.

3d. And be subject to all rules and regulations governing the said town.

In witness whereof, I hereunto set my hand and subscribe my name, this twenty-ninth day of December, A. D. 1846, as alcalde, in Yerba Buena.

GEORGE HYDE,
Alcalde.

Witness present:

Upon this entry there are cross-marks of cancellation.
(Not taken.)

[Book A of original grants, page 319.]

Lot No. 238, *granted to John Sears.*

MAGISTRATE'S OFFICE, SAN FRANCISCO.

This is to certify, that on the thirteenth day of March, A. D.
69 1847, I, Edwin Bryant, Alcalde or Chief Magistrate of St. Francisco, by virtue of my office, have granted, ceded, conveyed, and confirmed unto John Sears, a citizen of California, lot number two hundred and thirty-eight, (238,) in the town of St. Francisco, said lot being fifty Spanish varas sqaare; and gave unto the said John Sears, his heirs and assigns, a full and valid title unto said lot number two hundred and thirty-eight, (238,) under the forms and conditions set forth in the title, and recorded in this register; and that I put the said John Sears in full and quiet possesion of said lot two hundred and thirty-eight, and record the same for his security.

EDWIN BRYANT,,
Chief Magistrate.

"Void."

GEORGE HYDE,
First Alcalde.

Cancelled by cross-marks.

[Book A of original grants, page 339, as to lot 239. H. Wood.]

Lot No. 229, *granted to Henry Wood.*

CHIEF MAGISTRATE'S OFFICE, SAN FRANCISCO.

This is to certify, that on the twentieth day of March, A. D. 1847, I, Edwin Bryant, Alcade or Chief Magistrate of San Francisco, by virtue of my office, have granted, ceded, conveyed, and confirmed unto Henry Wood, a citizen of California, lot No. 229, (two hundred and twenty-nine,) in the town of San Francisco, said lot being fifty Spanish square; and gave unto the said Henry Wood, his heirs and assigns, a full and valid title unto said lot No. 229, (two hundred and twenty-nine,) under the forms and conditions set forth in the title, and recorded in this register; and that I put the said Henry Wood in full and quiet possession of said lot No. two hundred and twenty-nine, (229,) and recorded the same for his security.

EDWIN BRYANT,
Chief Magistrate.

This lot being forfeited, has been granted to B. S. Lippincott, book A, page 179.

GEORGE HYDE,
First Alcade.

70 [Page 180, as to lot No 229.—B. S. Lippincott.]

Lot, No. 229.

Whereas, Benj. S. Lippincott has presented a petition soliciting for the grant of a title to a lot of ground therein described; therefore

I, the undersigned alcalde, do hereby give, grant, and convey unto the said Benj. S. Lippincott, his heirs and assigns forever, lot number two hundred and twenty-nine, containing fifty varas square, in the town of San Francisco, subject to all the rules and regulations governing in such cases.

In testimony whereof, I have hereunto set my hand, and as alcalde, this twenty-fourth day of July, 1847.

GEORGE HYDE,
1st Alcalde.

Copied in book No. 2, certified grants, page 128.

[Book A of original grants, page 211, as to lot 251. S. Kyburg.]

Lot No. 251, *(two hundred and fifty-one,) granted to Samuel Kyburg.*

CHIEF MAGISTRATE'S OFFICE, SAN FRANCISCO,

This is to certify, that on the 26th of January, A. D. 1847, I, Wash'n A. Bartlett, alcalde or Chief Magistrate of San Francisco, by virtue of my office, have granted, ceded, conveyed, and confirmed to Samuel Kyburg, a citizen of the district of San Francisco, the lot 251, (two hundred and fifty-one,) in the town of San Francisco, said lot being fifty Spanish varas square, and give unto the said Samuel Kyburg, his heirs and assigns, a full and valid title to said lot No. 251, (two hundred and fifty-one,) under the forms and conditions set forth in the title and recorded in this register; and that I put the said Samuel Kyburg in full and quiet possession of said lot number two hundred and fifty-one, and record the same for his security.

WASH'N A. BARTLETT,
Chief Magistrate.

"Void."

GEORGE HYDE,
1st Alcalde.

71 This deed has been discarded by the petitioner, and this record is hereby erased according to law.

GEORGE HYDE,
1st Alcalde.

[Book A of original grants, pages 149, 150, 151, 152, 153, and 155, inclusive, showing forms, etc.]

[PAGE 149]

Lot No. 466 *granted to Joseph Haust.*

MAGISTRATE'S OFFICE, SAN FRANCISCO.

This is to certify, that on the fifth day of June, A. D. 1847, I, George Hyde, Chief Magistrate of the district of Francisco, by virtue of my office, have granted, ceded, conveyed, and confirmed unto Joseph Haust, a citizen of California, lot number four hundred and sixty-six, in the town of St. Francisco, containing fifty varas square,

and gave unto the said Joseph Haust, his heirs and assigns, a full and valid title unto said lot 466, under the forms and conditions set forth in the title and recorded in this register; and that I put the said Joseph Haust in full and quiet possession of said lot 466, and record the same for his security.

GEORGE HYDE,
1*st Alcalde.*

Copied in book No. 2, certified grants, page 301.

[PAGE 149.]

Whereas, Mathew J. Haan has presented a petition soliciting for the grant of a title to lots Nos. 451 and 474, in the town of San Francisco; therefore I, the undersigned, alcalde, do hereby give, grant, and convey unto the said Matthew J. Haan, his heirs and assigns forever, the aforesaid lots Nos. 451 and 474, being one hundred varas deep by fifty varas front, subject to the following conditions.

1st. That the said Mathew J. Haan, his heirs and assigns, shall erect or cause to be erected a dwelling house on said premises within one year from the date of these presents.

2d. That the said Mathew J. Haan, his heirs or assigns shall inclose or cause said lot to be inclosed with a suitable fence.

3d. And to be subject to all the rules and regulations governing in such cases.

72 In testimony whereof, I have hereunto set my alcalde this ninth day of June, A. D. 1847.

GEORGE HYDE,
1*st Alcalde.*

Copied in book No. 2, certified grants, page 285.

[PAGE 150.]

Whereas, B. R. Buckelew presented a petition soliciting for the grant of a title to a lot of land therein described; therefore, I, the undersigned alcalde, do hereby give, grant, and convey unto the said Benj. R. Buckelew, his heirs and assigns forever, a lot of land containing one hundred varas square, in the town of St. Francisco, near the waters of the bay of San Francisco, immediately northward and adjoining the spot known as Fort Montgomery, and bounded as follows: North by Union street, east by Battery street or place; south by Green street, and west by Samsom street; said lot being subject to all the rules and regulations usual in such grants; to be inclosed and a house built upon it.

Ninth day of June, A. D. 1847.

GEORGE HYDE,
1*st Alcalde.*

[Page 150.]

Whereas John C. Buchanan has presented a petition soliciting for the grant of a title to a lot of land in the town of St. Francisco, therein described; therefore I, the undersigned alcalde, do hereby give, grant, and convey unto the said Jno. C. Buchanan, his heirs and assigns forever, lots Nos. 560, 561, 580, and 581, as marked on the plan or map of the town of San Francisco, being equal to one hundred varas square, subject to the following conditions.

1st. That the said Jno. C. Buchanan, his heirs or assigns, shall erect, or cause to be erected, a dwelling-house on said premises, within one year from the date of these presents.

2d. That the said Jno. C. Buchanan, his heirs or assigns, shall inclose or cause to be inclosed said lot with a suitable fence.

3d. And to be subject to all rules and regulations governing in such cases.

73 In testimony whereof, I have hereunto set my hand as alcalde, this ninth day of June, A. D. 1847.

GEORGE HYDE,
1st Alcalde.

Copied in book No. 2, of certified grants, page 372.

[Page 151.]

Whereas, Jno. C. Buchanan has presented a petition soliciting for a title to a lot of land in the town of San Francisco as therein described:

Therefore, I, the undersigned alcalde, do hereby give, grant, and devise unto the said Jno. C. Buchanan, his heirs and assigns forever, lots 582 and 562, as marked on the plan or map of the town of San Francisco, said lots being one hundred varas deep by fifty front, subject to the following conditions:

1st. That the said Jno. C. Buchanan and his heirs or assigns shall erect or cause to be erected a dwelling-house on the said premises within one year from the date of these presents.

2. That the said Jno. C. Buchanan, his heirs or assigns, shall inclose or cause to be inclosed said lots with a suitable fence.

3d. And be subject to all the rules and regulations governing such cases.

In testimony whereof, I have hereunto set my hand as alcalde, this ninth day of June, A. D. 1847.

GEORGE HYDE,
1st Alcalde.

Copied in book No. 2, certified grants, page 373.

[Page 151.]

No. 487.

MAGISTRATE'S OFFICE, SAN FRANCISCO.

This is to certify, that on the ninth day of June, A. D. 1847, I George Hyde, alcalde of the district of San Francisco, by virtue of

my office, have granted, ceded, conveyed, and confirmed unto James Black, a citizen of California, lot 489, (four hundred and eighty-nine,) town of San Francisco, containing fifty varas square, and gave unto the said James Black, his heirs and assigns, a full and valid title unto said lot No. 489, under the forms and conditions set forth in the
74 title and recorded in this register; and that I put the said James Black in full and quiet possession of said lot No. 489, and record the same for his security.

GEORGE HYDE,
1*st Alcalde.*

See Liber 185 of deeds, page 6.

Copied in book No. 2, certified grants, page 317.

[Page 152.]

Lot No. 490, *granted James Black.*

MAGISTRATE'S OFFICE, SAN FRANCISCO.

This is to certify that on the ninth day of June, A. D. 1847, I Georye Hyde, Alcalde of the district of San Francisco, by virtue of my office, have granted, ceded, conveyed, and confirmed unto James Black, a citizen of California, lot number four hundred and ninety, (490,) in the town of San Francisco, containing fifty varas square, and gave unto the said James Black, his heirs and assigns, a full and valid title unto said lot No. 490, under the forms and conditions set forth in the title and recorded in this register; and that I put the said James Black in full and quiet possession of said lot No. 490, and record the same for his security.

GEORGE HYDE,
1*st Alcalde.*

Copied in book No 2, certified grants, page 318.

[Page 152]

Whereas, James Black has presented a petition soliciting for the grant of a title to lots numbered 491, and 518, in the town of San Francisco, as therein described. Therefore, I the undersigned, alcalde, do therefore give, grant, and convey unto the said James Black, his heirs, and assigns, forever, the aforesaid lots numbered 491 and 518, as marked on the plan of the town of San Francisco, being one hundred varas deep by fifty front, subject to the following conditions:

1st. That the said James Black, his heirs, or assigns, shall erect, or cause to be erected, a dwelling-house on said premises within one year from the date of these presents.

2d. That the said James Black, his heirs, or assigns shall inclose or cause to be inclosed said lot with a suitable fence.

[Page 150.]

Whereas John C. Buchanan has presented a petition soliciting for the grant of a title to a lot of land in the town of St. Francisco, therein described; therefore I, the undersigned alcalde, do hereby give, grant, and convey unto the said Jno. C. Buchanan, his heirs and assigns forever, lots Nos. 560, 561, 580, and 581, as marked on the plan or map of the town of San Francisco, being equal to one hundred varas square, subject to the following conditions.

1st. That the said Jno. C. Buchanan, his heirs or assigns, shall erect, or cause to be erected, a dwelling-house on said premises, within one year from the date of these presents.

2d. That the said Jno. C. Buchanan, his heirs or assigns, shall inclose or cause to be inclosed said lot with a suitable fence.

3d. And to be subject to all rules and regulations governing in such cases.

73 In testimony whereof, I have hereunto set my hand as alcalde, this ninth day of June, A. D. 1847.

GEORGE HYDE,
1*st Alcalde.*

Copied in book No. 2, of certified grants, page 372.

[Page 151.]

Whereas, Jno. C. Buchanan has presented a petition soliciting for a title to a lot of land in the town of San Francisco as therein described:

Therefore, I, the undersigned alcalde, do hereby give, grant, and devise unto the said Jno. C. Buchanan, his heirs and assigns forever, lots 582 and 562, as marked on the plan or map of the town of San Francisco, said lots being one hundred varas deep by fifty front, subject to the following conditions:

1st. That the said Jno. C. Buchanan and his heirs or assigns shall erect or cause to be erected a dwelling-house on the said premises within one year from the date of these presents.

2. That the said Jno. C. Buchanan, his heirs or assigns, shall inclose or cause to be inclosed said lots with a suitable fence.

3d. And be subject to all the rules and regulations governing such cases.

In testimony whereof, I have hereunto set my hand as alcalde, this ninth day of June, A. D. 1847.

GEORGE HYDE,
1*st Alcalde.*

Copied in book No. 2, certified grants, page 373.

[Page 151.]

No. 487.

MAGISTRATE'S OFFICE, SAN FRANCISCO.

This is to certify, that on the ninth day of June, A. D. 1847, I George Hyde, alcalde of the district of San Francisco, by virtue of

my office, have granted, ceded, conveyed, and confirmed unto James Black, a citizen of California, lot 489, (four hundred and eighty-nine,) town of San Francisco, containing fifty varas square, and gave unto the said James Black, his heirs and assigns, a full and valid title unto said lot No. 489, under the forms and conditions set forth in the
74 title and recorded in this register; and that I put the said James Black in full and quiet possession of said lot No. 489, and record the same for his security.

GEORGE HYDE,
1*st Alcalde.*

See Liber 185 of deeds, page 6.

Copied in book No. 2, certified grants, page 317.

[Page 152.]

Lot No. 490, *granted James Black.*

MAGISTRATE'S OFFICE, SAN FRANCISCO.

This is to certify that on the ninth day of June, A. D. 1847, I Georye Hyde, Alcalde of the district of San Francisco, by virtue of my office, have granted, ceded, conveyed, and confirmed unto James Black, a citizen of California, lot number four hundred and ninety, (490,) in the town of San Francisco, containing fifty varas square, and gave unto the said James Black, his heirs and assigns, a full and valid title unto said lot No. 490, under the forms and conditions set forth in the title and recorded in this register; and that I put the said James Black in full and quiet possession of said lot No. 490, and record the same for his security.

GEORGE HYDE,
1*st Alcalde.*

Copied in book No 2, certified grants, page 318.

[Page 152]

Whereas, James Black has presented a petition soliciting for the grant of a title to lots numbered 491, and 518, in the town of San Francisco, as therein described. Therefore, I the undersigned, alcalde, do therefore give, grant, and convey unto the said James Black, his heirs, and assigns, forever, the aforesaid lots numbered 491 and 518, as marked on the plan of the town of San Francisco, being one hundred varas deep by fifty front, subject to the following conditions:

1st. That the said James Black, his heirs, or assigns, shall erect, or cause to be erected, a dwelling-house on said premises within one year from the date of these presents.

2d. That the said James Black, his heirs, or assigns shall inclose or cause to be inclosed said lot with a suitable fence.

3d. And be subject to all the rules and regulations governing in such cases.

75 In testimony whereof, I have hereunto set my hand as alcalde, this ninth day of June, A. D. 1847.

GEORGE HYDE,
1*st Alcalde.*

Copied in book No. 2, certified grants, page 379.

[Book A, of original grants, page 155.]

Whereas, William Hood has presented a petition soliciting for the grant of a title to a lot of land containing one hundred varas square, as herein described, in the vicinity of the town of San Francisco; therefore, I, the undersigned, alcalde, do hereby give, grant, and convey, unto the said William Hood, his heirs and assigns, forever, a lot of land one hundred varas square, bounded as follows: North by Filbert street, east by Battery street or place, south by Union street, west by Sansom street, said lot being subject to the following conditions·

1st. That the said William Hood, his heirs or assigns, shall erect, or cause to be erected, a dwelling-house on said premises within one year from the date of these presents.

2d. That the said William Hood, his heirs or assigns, shall inclose, or cause to be inclosed, said lot with a suitable fence.

3d. And to be subject to all the rules and regulations governing in such cases.

In testimony whereof, I have hereunto set my hand as alcalde, June 12th, 1847.

GEORGE HYDE,
1*st Alcalde.*

[Book B, original grants, page 21.—Entry as to J. S. Ruckle.]

Lot No. 251, *granted to J. S. Ruckle.*

This is to certify that, on the seventh day of October, A. D. 1847, I, George Hyde, 1st Alcalde of the district of San Francisco, have granted, ceded, conveyed, and confirmed unto J. S. Ruckle, a citizen of California, lot No. 251, (two hundred and fifty-one,) in the town of San Francisco, containing fifty varas square, and gave unto the said J. S. Ruckle, his heirs and assigns, a full and valid title to said lot No. 251, under the usual forms and conditions of said grants, set forth in this title; and that I put the said J. S.

76 Ruckle in full and quiet possession thereof, of said lot No. 251, and record the same for his security.

GEORGE HYDE,
1*st Alcalde.*

Copied in book No. 2, certified grants, page 10; see Liber 107 of deeds, page 221.

[Book A, of original grants, pages 268, 273, 274, 275, 276.]

(Pet's and grants in full.)

To GEORGE HYDE, *Alcalde of the district of San Francisco:*

Your petitioner being a citizen of the California, according to the proclamation of Commodore Robert F. Stockton, governor of California, and a resident of the aforesaid district, would respectfully solicit for the grant of a title to a lot in the vicinity of the town of Yerba Buena, containing one hundred varas square, upon which he intends to erect a dwelling-house according to the rules and regulations governing in such cases; and desires that you will give immediate possession thereof.

ROBERT T. RIDLEY.

Yerba Buena, Jan. 15th, 1847.

Whereas, Robert T. Ridley has presented the foregoing petition, soliciting for the grant of a title to a lot of land in the vicinity of the Yerba Buena, containing one hundred varas square; I, the undersigned, alcalde, do hereby give, grant, and convey the said as above and therein described, unto the said Robert T. Ridley, his heirs and assigns forever, subject to the following conditions.

1st. That the said Robert T. Ridley, his heirs or assigns, shall erect, or cause to be erected, on the said premises a dwelling-house within one year from these presents.

2d. That the said Robert T. Ridley, his heirs or assigns, shall inclose, or caused to be inclosed, the said lot with a suitable fence.

3d. And be subject to all the rules and regulations governing in such cases.

In testimony whereof, I have hereunto set my hand and
77 subscribed my name as alcalde, this sixteenth day of January, A. D. 1847.

GEORE HYDE,
Alcalde.

Witnesses present:
PETER T. SHERREBACK.
JOS. G. DUNLEAVY.

Copied in book No. 1, certified grants, page 16 for 18.

[Book A of original grants, page 273.]

To GEORGE HYDE, *Alcalde of the District of St. Francisco:*

Your petitioner, being a citizen of California, according to the proclamation of his excellency, Commodore Robert F. Stockton, and a resident of the aforesaid district, would respectfully solicit for the grant of a title to a lot of ground in the vicinity of Yerba Buena, containing one hundred varas square, on the south side of the Mission street or road, according to the rules and regulations governing in such cases, and that you will give immediate possession thereof.

FREDERICK TESCHMACHER.

Yerba Buena, Jan. 12th, 1847.

Whereas, Frederick Teschmacher has presented the foregoing petition, soliciting for the grant of a title to a lot of ground in the vicinity of Yerba Buena, containing one hundred varas square: I, the undersigned, alcalde, do hereby give, grant, and convey the said lot as therein described unto the said Frederick Teschmacher, his heirs and assigns forever, subject to the following conditions:

1st. That said Frederick Teschmacher, his heirs or assigns, shall erect, or cause to be erected, a dwelling-house on the said premises within one year from the date of these presents.

2d. That the said Frederick Teschmacher, his heirs or assigns, shall inclose, or cause the said lot to be inclosed, with a suitable fence.

3d. And be subject to all rules and regulations governing in such cases.

In testimony whereof, I have hereunto set my hand and subscribed my name as alcalde, this sixteenth day of January, A. D. 1847, in the town of Yerba Buena.

GEORGE HYDE.

Witnesses present:
W. D. M. HOWARD.
J. G. T. DUNLEAVY.

78 Registered lot number sixteen, on Mission street, next west of Don Jose Thompson's.

WASH'N A. BARTLETT, *Alcalde.*

Feb'y 20th, 1847.

[Book A of original grants, page 274.]

To GEORGE HYDE, *Alcalde of the District of St. Francisco:*

Your petitioner, Joseph Hicks, by his attorney, William A. Leidesdorff, would respectfully solicit for the grant of a title to lot number two hundred and seventy-eight, (278,) as marked on the plan or map of the town of Yerba Buena, as exhibited in your office, the same being vacant and unoccupied, according to the rules and regulations governing in such cases, and desires that you will give immediate possession thereof.

JOSEPH HICKS,
By his attorney, WM. A. LEIDESDORFF.

Yerba Buena, Jan. 10th, 1844.

Whereas, Joseph Hicks, by his attorney, Wm. A. Leidesdorff, has presented the foregoing petition, asking for a title to lot number two hundred and seventy-eight, (278,) as marked on the plan or map of the town of Yerba Buena; I, the undersigned, alcalde, do hereby give, grant, and convey the said lot as above described unto the said Joseph Hicks, his heirs or assigns forever, subject to the following conditions:

1st. That the said Joseph Hicks, his heirs or assigns, shall erect,

or cause to be erected, on the said premises a dwelling-house within one year from the date of these presents.

2d. That the said Joseph Hicks, his heirs or assigns, shall inclose, or cause to be inclosed, the said lot with a substantial fence.

3d. And to be subject to all the rules and regulations governing in such cases.

In testimony whereof, I have hereunto set my hand and subscribed my name as alcalde, this sixteenth day of January, A. D. 1847, in the town of Yerba Buena.

GEORGE HYDE, *Alcalde.*

Witnesses:

W. D. M. HOWARD.
HENRY CHEVERS.

79 [Book A, page 275-6.—Yerba Buena, Dec. 29th, 1847.]

To GEORGE HYDE, Esq.,
First Alcalde of the District of San Francisco:

The undersigned, a citizen of California, having had possession of the premises, containing twenty-five varas by fifty, situated on the street fronting the beach, and the one running passed the premises of Mellus Howard, Virget & Leidesdorff, being lot No. two (2) on the plan of Yerba Buena, and having made the necessary improvements therein required by the laws of California, would respectfully solicit the grant of a title to the said twenty-five varas by fifty, according to the import of the proclamation of his excellency, Commodore Stockton, governor of California, etc.

NATHAN SPEAR.

Whereas, Nathan Spear has presented the foregoing petition, asking for a title to the lot of land, with the tenements thereon erected, stating that he has complied with all the requirements of the law governing such cases; and I, the undersigned, alcalde, believing the same to be true, do hereby give, grant, and convey the said lot, as herein described, unto the said Nathan Spear, his heirs and assigns, for the benefit of his family forever, subject to the following conditions: That the said lot shall be at all times subject to the laws and regulations governing the said town.

Done at Yerba Buena, this eleventh day of January, A. D. 1847.

GEORGE HYDE, *Alcalde.*

Witnesses present:

JASPER O'FARREL.
J. G. T. DUNLEAVY.

Copied in book No. 3, certified grants, page 11.

[Book of original grants, page 281.]

To GEORGE HYDE, *Alcalde of the District of San Francisco:*

Your petitioner, by his attorney, G. McKinstry, being a citizen of California, according to the proclamation of his excellency, Com-

modore Robert F. Stockton, and a resident of aforesaid district, would respectfully solicit for the grant of a title to a lot of land containing one hundred varas square, in the vicinity of the town
80 of San Francisco, on which he intends to erect a dwelling-house, according to the rules and regulations governing in such cases, and desires that you will give immediate possession thereof.

JOHN A. SUTTER,
By his attorney, G. McKINSTRY.

Yerba Buena, Jan. 16, 1847.

Whereas, John A. Sutter has presented the foregoing petition, soliciting for the grant of a title to a lot of land in the vicinity of the town of San Francisco, containing one hundred varas square, as therein described. Therefore, I, the undersigned, alcalde, do give, grant, and convey unto the said John A. Sutter the said lot of land, unto his heirs and assigns forever, subject to the following conditions:

1st. That the said John A. Sutter, his heirs or assigns, shall erect, or cause to be erected, on the said premises, a dwelling-house, within one year from the date of these presents.

2d. That the said John A. Sutter, his heirs and assigns, shall inclose, or cause the said lot to be inclosed, with a suitable fence.

3d. That the said lot shall be subject to all the rules and regulations governing such cases.

In witness whereof, I have hereunto set my hand and subscribed my name as alcalde, this 1st day of February, 1847, in the town of San Francisco.

Witnesses present.

[Book A of original grants, page 295.]

To EDWIN BRYANT, Esq.,
First Alcalde of the District of San Francisco:

Your petitioner, being citizen of California, according to the proclamation of his excellency, Commodore R. F. Stockton, Governor, etc., would respectfully solicit for the grant of a title to a lot of land containing one hundred varas square, adjoining that of George Hyde, on the southerly side of said lot of G. Hyde, being on the south side of the Mission street or road, and adjoining the shore of the bay on the easterly side, in the vicinity of San Francisco, and desires that you will give immediate possession thereof.

JOSIAH BELDEN.

San Francisco, March 4, 1847.

81 Whereas, Josiah Belden has presented the foregoing petition, soliciting for the grant of a title to a lot of land in the vicinity of Yerba Buena, containing one hundred varas square, as therein described. Therefore, I, the undersigned, alcalde, do hereby give, grant, and convey the said lot unto the said Josiah Belden, his heirs and assigns forever, subject to the following conditions:

1st. That the said Josiah Belden, his heirs or assigns, shall erect, or cause to be erected, a dwelling-house on the said premises within one year from the date of these presents.

2d. That the said Josiah Belden, his heirs or assigns, shall inclose, or cause to be enclosed, the said lot with a suitable fence.

3d. And to be subject to all the rules and regulations governing in such cases.

In testimony whereof, I have hereunto set my hand and subscribed my name as alcalde, this fifth day of March, A. D. 1847, in the town of Yerba Buena.

EDWIN BRYANT,
Alcalde or Chief Magistrate.

JAMES G. T. DUNLEAVY.
JNO. C. BUCHANAN.

A true copy, attest:

JNO. C. BUCHANAN, *Clerk.*

Copied in book No. 1, certified grants, page 17.
The number of this lot is 19 on the plan or map now in office.

[Book A, of original grants, page 305½.]

To WASHINGTON A. BARTLETT,
First Alcalde of the district of San Francisco:

Your petitioner would respectfully solicit for the grant of a title to a lot of land, containingone hundred varas square, being the lot situated on the south side of Mission street or road, bounded northerly by a lot now belonging to Geo. Hyde, of San Francisco, easterly by a lot owned or petitioned by , southwardly by street, and westwardly by a vacant lot. Your petitioner is a citizen of United States of America, and desires that you will give him possession of the said lot at your earliest convenience.

J. C. EVERETT.

San Francisco, Jan. 1847.

Copied in book No. 1, certified grants, page 30.

82 Whereas, J. C. Everett has petitioned for the grant of a title of a lot of land in the vicinity of Yerba Buena, containing one hundred varas square in said petition; therefore, I, the undersigned, alcalde, do give, grant, and convey, the said lot to the said J. C. Everett, his heirs and assigns forever, subject to the following conditions: 1st. That the said J. C. Everett, his heirs and assigns, shall erect, or cause to be erected, a dwelling-house on said premises within one year from the date of these presents. 2d. That the said J. C. Everett shall, his heirs or assigns, inclose, or cause to be inclosed, said lot with a suitable fence. 3d. And to be subject to all the rules and regulations governing in such cases.

In testimony whereof, I have hereunto set my hand and subscribed my name as alcalde, this ninth day of March, A. D. 1847, in the town of Yerba Buena.

EDWIN BRYANT,
Chief Magistrate.

[Book A, of original grants, page 306.]

To WASHINGTON A. BARTLETT,
First Alcalde of the District of San Francisco:

Your petitioner would respectfully solicit for the grant of a title to a lot of land, containing one hundred varas square, on the south side of Mission street or road, being the lot next adjoining that of Joseph P. Thompson, on the southward side, in the vicinity of San Francisco, and desires that you will give him immediate possession thereof.

FRED. W. FRANZ.

San Francisco, Feb. 3d, 1847.

Whereas, Fred. W. Franz has presented the foregoing petition, soliciting for the grant of a title to a lot of land in the vicinity of Yerba Buena, containing one hundred varas square, as therein described; therefore, I, the undersigned alcalde, do hereby give, grant, and convey, unto the said Fred. W. Franz, his heirs and assigns, forever, the said lot, subject to the following conditions:

1st. That the said Fred. W. Franz, his heirs or assigns, shall erect, or cause to be erected, a dwelling-house on the said premises, within one year from date of these presents.

2d. That the said Fred. W. Franz, his heirs or assigns, shall inclose, or cause to be inclosed, the said lot with a suitable fence.

83 3d. And to be subject to all the rules and regulations governing in such cases.

In testimony, I have hereunto set my hand and subscribed my name as alcalde, the ninth day of March, A. D. 1847.

EDWARD BRYANT,
Chief Magistrate.

[Book A, of original grants, page 307.]

To EDWIN BRYANT, *Alcalde of the District of St. Francisco:*

Your petitioner being a citizen of California, according to the proclamation of his excellency, Commodore R. F. Stockton, and a resident of aforesaid district, would respectfully solicit for the grant of a title to a lot of land, No. 32, containing one hundred varas square, in the town of St. Francisco or Yerba Buena, on the south side of Mission road or street, upon which he intends to erect a dwelling-house according to the rules and regulations govering in such cases, and desires that you will give possession thereof as soon as your convenience will permit.

JNO. HENRY BRAWN.

Yerba Buena, March 4th, 1847.

Whereas, John H. Brawn has presented the foregoing petition, soliciting for a grant of a title to a lot of land in the vicinity of Yerba Buena, containing one hundred varas square as therein described;

therefore, I, the undersigned, alcalde, do give, grant, and convey the said lot unto the said John H. Brawn, his heirs and assigns forever, subject to the following conditions:

1st. The said John H. Brawn, his heirs or assigns, shall erect, or caused to be erected, a dwelling-house on the said premises within one year from the date of these presents.

2d. That the said John H. Brawn, his heirs or assigns, shall inclose, or cause to be inclosed, the said lot with a suitable fence.

3d. And to be governed by all the rules and regulations governing in such cases.

In testimony whereof, I have hereunto set my hand and subscribed my name as alcalde, this ninth day of March, A. D. 1847, in the town of Yerba Buena.

EDWIN BRYANT,
Chief Magistrate.

84 [Book A, of original grants, page 282.)

To GEORGE HYDE, *Alcalde of the District of San Francisco:*

Your petitioner being a citizen of California, according to the proclamation of his excellency, Commodore Robert F. Stockton, and a resident of the aforesaid district, would respectfully solicit for the grant of a title to a lot of land containing one hundred varas square, in the vicinity of San Francisco, on the south side of Mission street or road, upon which he intends to erect a dwelling-house according to the rules and regulations governing in such cases, and desires that you will give immediate possession thereof.

G. McKINSTRY, JR.

Yerba Buena, January 16th, 1847.

Whereas, George McKinstry has presented the foregoing petition, soliciting for the grant of a title to a lot of land in the vicinity of San Francisco, containing one hundred varas square, therein described; therefore, I, the undersigned, alcalde, do give, grant, and convey the said lot of land unto the said George McKinstry, his heirs and assigns forever, subject to the following conditions:

1st. That the said George McKinstry, his heirs or assigns, shall erect, or cause to be erected, on the said premises, a dwelling-house within one year from the date of these presents.

2d. That the said George McKinstry, his heirs and assigns shall inclose, or cause to be inclosed, the said lot with a suitable fence.

3d. That the said lot shall be subject to all the rules and regulations governing such cases.

In witness whereof, I have hereunto set my hand and subscribed my name as alcalde, this first day of February, 1847.

[Book A, of original grants, pages 283 and 284.]

To GEORGE HYDE, *Alcalde of the District of San Francisco:*

Your petitioner, being a citizen of California, according to the proclamation of his excellency, Commodore Robert F. Stockton, and

a resident of the aforesaid district, would respectfully solicit for the grant of a title to a lot of land, containing one hundred varas square, in the vicinity of the town of San Francisco, on the south side of Mission street or road, upon which he intends to erect a dwelling-house according to the rules and regulations governing in such cases, and desires that you will give immediate possession thereof.

EDWARD M. KERN.
By his attorney, G. M. KINSTRY.

San Francisco, Feb. 2d, 1847.

Whereas, Edward M. Kern has presented the foregoing petition, soliciting for the grant of a title to a lot of land in the vicinity of the town of San Francisco, containing one hundred varas square as therein described; therefore, I, the undersigned, alcalde, do give, grant, and convey the said lot of land unto the said Edward M. Kern, his heirs and assigns forever, subject to the following conditions:

1st. That the said Edward M. Kern, his heirs or assigns, shall erect, or cause to be erected on the said premises, a dwelling-house within one year from the date of these presents.

2d. That said Edward M. Kern, his heirs or assigns, shall inclose, or cause the said lot to be enclosed, with a suitable fence.

3d. That the said lot shall be subject to all the rules and regulations governing in such cases.

In witness whereof, I hereunto set my hand and subscribe my name as alcalde, this first day of February, 1847.

Winesses:

GALLENTS D. DICKINSON.
B. R. BUCKALEW.

[Book A of original grants, page 277.]

For and in consideration of one thousand dollars, in two promissory notes, one of seven hundred dollars, one of three hundred dollars, well and truly paid at or before the sealing thereof, I, the undersigned, having the right, title, and interest, and possession of the lot of ground belonging in the town of Yerba Buena, do hereby transfer all my said right, title, and interest of, in, and to all the said lot, and tenements erected on the said premises, unto the firm of and composed of Frank Ward, William M. Smith, and Henry Chevers, now doing business in the said town of Yerba Buena, their heirs and assigns forever; to have and to hold the said tenement and messuage and lot of land, as above described in the within or foregoing deed, together with all and singular, the houses, out-houses, rights, wages, privileges, profits, and appurtenances whatsoever, unto the said Frank Ward, William N. Smith, and Henry Chevers, their heirs and assigns forever; and do hereby covenant and agree to warrant and defend the said premises against all claims or demands unto the said Frank Ward, Wm. N. Smith, and Henry Chevers, their heirs and assigns forever.

In testimony whereof, I have hereunto set my hand and seal, this eighteenth day of January, A. D. 1847.

J. DEJESUS NOE.

Witnesses present:
R. SEMPLE.
GEORGE HYDE.

Signed, executed, and witnessed before me.

WASHINGTON BARTLETT,
First Alcalde of San Francisco.

January 18th, 1847.

Copied in book No. 1, certified grants, page 13.

[Book A of original grants, page 278 and 279.]

To GEORGE HYDE, *Alcalde of the district of San Francisco:*

Your petitioner being a citizen of California, according to the proclamation of Commodore Robert F. Stockton, and a resident of the aforesaid district, would respectfully solicit for the grant of a title to a lot of land in the vicinity of Yerba Buena, containing one hundred varas square, on the north side of the Mission road or street, according to the rules and regulations governing in such cases, and desires that you will give immediate possession thereof.

HENRY HARRIS.

Yerba Buena, Jan. 9, 1847.

Known and marked on the map—lot No. 1, (one.)

GEORGE HYDE, *Alcalde.*

Whereas, Henry Harris has presented the foregoing petition, asking for a title to a lot of land containing one hundred varas square in the vicinity of Yerba Buena; I, the undersigned, alcalde, do hereby give, grant, and convey the said lot as therein described, unto the said Henry Harris, his heirs and assigns (or for the benefit of his family) forever, subject to the following conditions:

1st. That the said Henry Harris, his heirs or assigns, shall erect, or cause to be erected on the said premises, a dwelling-house within one year from the date of these presents.

87 2d. That the said Henry Harris, his heirs or assigns, shall inclose, or cause the said lot to be inclosed, with a suitable fence.

3d. That it be subject to the rules and regulations governing in such cases.

In testimony whereof, I have hereunto set my hand and subscribed my name as alcalde, this fourteenth day of January, A. D. 1847, in the town of Yerba Buena.

GEORGE HYDE, *Alcalde.*

Witnesses present:
JOS. G. T. DUNLEAVY.
R. SEMPLE.

Copied in book No: 1, certified grants, page 3.

[Book A of original grants, pages 279 and 280.]

To GEORGE HYDE, *Alcalde of the district of San Francisco*:

Your petitioner being a citizen of California, according to the proclamation of his excellency, Commodore Robert F. Stockton, and a resident of the aforesaid district, would respectfully solicit for the grant of a title to a lot of land containing one hundred varas square, in the vicinity of the town of Yerba Buena, on the north side of Mission street or road, upon which he intends to erect a dwelling-house according to the rules and regulations governing in such cases, and desires that you will give immediate possession thereof.

FRANK WARD.

Yerba Buena, January 15th, 1847.

Whereas, Frank Ward has presented the foregoing petition asking for the grant of a title to a lot of land in the vicinity of Yerba Buena, containing one hundred varas square, on the north side of the Mission road or street; I, the undersigned, alcalde, do hereby give, grant, and convey the said lot as therein described unto the said Frank Ward, his heirs and assigns forever, subject to the following conditions:

1st. That the said Frank Ward, his heirs or assigns, shall erect, or cause to be erected on the said premises, a dwelling-house within one year from the date of these presents.

2d. That the said Frank Ward, his heirs or assigns, shall enclose, or cause the said lot to be enclosed, with a suitable fence.

88 3d. And to be subject to all the rules and regulations governing in such cases.

In witness whereof, I have hereunto set my hand and subscribed my name as alcalde, this sixteenth day of January, A. D. 1847.

GEORGE HYDE, *Alcalde.*

Witnesses present:

JOS. G. T. DUNLEAVY.

WM. LEIDESDORFF.

This petition is for lot 65, on the plan now in office.

EDWIN BRYANT,
Chief Magistrate.

This lot, No. 65, called for by this title, has this day been located by Frank Ward. San Francisco, May 20th, 1847.

EDWIN BRYANT,
Chief Magistrate.

Copied in book No. 1, certified grants, page 47.

[Book A of original grants, page 280.]

Transfer deed to George Hyde by H. Harris.

For and in consideration of the sum of thirty-eight dollars, to me in hand paid, at or before the sealing hereof, I, the undersigned, do

hereby grant, concede, and convey, and confirm all my right, title, and interest of, in, and to the said lot, as described in the foregoing deed, etc., unto the said George Hyde, his heirs and assigns forever.

Witness my hand and seal, this nineteenth day of January, A. D. 1847.

HENRY HARRIS.

Witness present:
PETER T. SHERREBECK.

Done and executed before me, this nineteenth day of January, 1847.

WASH'N A. BARTLETT,
Chief Magistrate.

Transferred into book No. 1 of deeds, page 184.

89 The defendants, by their attorney, then introduced in evidence, from the office of the county recorder of the city and county of San Francisco, the book referred to by George Hyde, in his testimony, as the syndico's or alcalde's account book, labeled on the back "Ledger," and proved by inspection thereof and otherwise, that though it purports to contain entries of the moneys accruing to San Francisco, on account of municipal dues from grants of lots as charged against the syndico, and of moneys collected by him upon the delivery of grants, or grants returned because of the non-payment of the municipal dues, during the months of July, August, and September, 1847, yet that no entry there appears in reference to the one hundred-vara lot No. 39, or to the collection or payment of any municipal dues concerning the same.

The defendants then rested. Thereupon the plaintiff called Wm. S. Clark, who being sworn, testified as follows:

277. Where do you reside?

In the city of San Francisco.

278. How long have you resided there?

Since 1846.

279. I wish you would look at that entry on page 179, of book A, of "Original Grants," purporting to be the grant of lot No. 39 to George Donner; did you ever see it before?

Yes, sir.

280. When did you first see it?

In September, 1847.

281. Was the name of "George Hyde," First Alcalde, then signed to it, as it is now?

Yes, sir.

282. Will you state how you happened to see it?

I was familiar with the alcalde's office, being a member of the ayuntamiento or town council. The books and papers of the office were subject to the examination the same as any other office. Any one might look at them.

(Counsel for the defendant here objected to such testimony at this stage of the trial, as being cumulative of that offered in the case for

the prosecution, which was closed, and could not be regarded as rebutting testimony. The court allowed the objection. The examination of the witness was then resumed for the plaintiff.)

283. Who was alcalde at that time?

George Hyde.

284. Where was he at that time, (September, 1847?)

He was in the alcalde's office.

235. Was this book there at that time?

90 Yes, sir.

286. Did he see that book every day?

Yes, sir; I saw him look at the book frequently.

287. How long did he remain alcalde?

Until next April or May.

288. Where was this book during all the time he was alcalde?

It was in the alcalde's office.

289. State whether it was in common use at that time.

It was so.

290, Have you seen George Hyde write?

Yes, sir.

291. Do you know his signature?

I do.

292. How many times have you seen him write?

A great many times.

293. I will now ask you, with the permission of the court, whether that is George Hyde's signature, (pointing to the signature of the entry of the lot to George Donner, on page 179)?

I believe it is; I believe it to be his genuine signature.

294. Have you any doubt of it?

I have not.

395. Have you not had a great deal to do with real estate in this city?

Yes, a great deal.

296. Were you here when the Donner children came in?

Yes, sir.

The foregoing was all the evidence offered on the part of either of the parties, or received in evidence. The parties then entered into the following stipulation, viz:

In the District Court of the twelfth judicial district, in and for the city and county of San Francisco.

GEORGE DONNER
vs.
CYRUS PALMER *et al.*

It is hereby stipulated and agreed, that the question of tax titles relied upon by the defendants, as well as all the testimony relating to said titles, shall be, and the same is hereby withdrawn from the consideration of the jury, and the same, both upon the fact and the law, are hereby submitted for finding and decision to the court.

91 In the event that the verdict of the jury shall be against

the defendants, then the court may set aside the said verdict as to such parts of the demanded premises as the court shall hereafter find and adjudge to be the full property of the defendants or any of them, by force of the tax deeds given in evidence, and such other testimony as may be applicable to the question adduced before the judge on the question of the validity and sufficiency of the tax titles.

And it is further stipulated, that either party shall have five days within which to give notice of intention to move a new trial after the court shall have made a decision upon the matters so reserved for decision by the court.

(Signed) E. W. F. SLOAN,
S. F. REYNOLDS,
HOGE & WILSON,
S. O. HOUGHTON,
Att'y for Pl'ff.

Dated, August 15th, A. D. 1864.

Either party may also file a bill of costs within two days after the decision of the judge on the tax titles.

(Signed) HOGE & WILSON,
Att'y for Defendants.
S. O. HOUGHTON,
For Plaintiff.

The defendant's counsel thereupon requested the court to give to the jury the following instructions, which were given and refused, respectively as marked in the margin, as follows, viz:

Defendants' Instructions.

GEORGE DONNER
vs.
CYRUS PALMER *et al.*

I. The plaintiff in his complaint founds his right to recover upon an alleged grant of the premises in question, made and delivered to one George McDonald for him, by George Hyde, as alcalde of San Francisco, on the nineteenth day of July, 1847, unless, therefore, you are satisfied from the evidence before you that the grant was by the alcalde executed and delivered to the plaintiff or to some one for him, you should find for the defendant. (Given, O. C. P.)

II. The alcalde was not the proprietor of the municipal lands, and could only grant lots or portions thereof, by virtue of
92 powers derived from the laws and regulations on the subject; the exercise of that power was limited and restricted by certain conditions which he had no authority to waive or dispense with; if he undertook to grant the lot without the payment of the municipal fee, his act was void; so of a grant made to a person legally incapable of forming the conditions. (Not given, O. C. P.)

III. Infants were incapable of binding themselves to perform the conditions upon which grants of municipal lands were made by alcaldes, and were therefore incapable of receiving grants. (Not given.)

IV. In case of a grant under a power, the regularity of the whole proceedings is to be made out as a part of the purchaser's title; if irregular, the grantee takes nothing by it. In granting lots of pueblo land, the alcalde acted under a mere power, and the payment of the municipal fee was an indispensible prerequisite to the exercise of such power. Unless, therefore, you find from the evidence, that the fee of twenty-five dollars was paid for the one hundred vara lot in question, the alleged grant was void for want of power, and your verdict should be for defendants. (Not given, O. C. P.)

V. Unless you are satisfied from the evidence that the grant was signed by the alcalde in his own proper handwriting, you should find for the defendants. (Given, O. C. P.)

VI. Unless you are satisfied from the evidence that the one hundred vara lot No. 39, as now located on the official map of the city of San Francisco, was the same lot which was petitioned for and described in the grant, you should find for defendants. (Given, O. C. P.)

The defendants' counsel then and there excepted to the decision of the court in refusing to give the said instructions numbers 2, 3, and 4, as above requested.

The court then gave to the jury the following additional general charge, viz:

Charge of the Judge in addition to certain specific charges given, which were asked by the defendants.

GEORGE DONNER
vs.
CYRUS PALMER *et al.*

93 Gentlemen of the jury: In this action, Donner, the plaintiff, claims as against the defendants to recover possession of a lot of land in this city, known on the official map as one hundred vara lot number thirty-nine, situated on the southeast corner of Folsom and Second streets. He claims such right of possession as against the defendants in virtue of an alleged grant made to him of it on the nineteenth day of July, 1847, by the then acting alcalde of the town, George Hyde.

Defendants resist plaintiff's right of possession, and deny that the alcalde ever made any grant of the lot in question, and insist that their possession to the extent of the several parcels described in their respective answers, is rightfully under and through the title hereto acquired by them, respectively, under what is known as the "Van Ness ordinance."

The questions submitted to you are those of fact; the law arising from the facts the court must determine, and not you. With this understanding, the court charges you as follows:

First. Neither the court nor the jury has anything to do with the alleged fact that plaintiff excited the sympathies of the benevolent people of San Francisco or elsewhere by reason of the misfortunes attending his coming to California, and through which money was either actually raised or attempted to be raised to procure him an alcalde grant; or whether if a grant of the lot in question was obtained the effect of a recovery of it in this action will be to deprive the defendants or any of them of homes sought to be established upon it; with these matters we have nothing to do.

Second. If you find from the proofs, that George Hyde, on the nineteenth day of July, 1847, was the acting alcalde of the town of Yerba Buena, now city of San Francisco, and that in his official capacity as such alcalde, he made a grant to the plaintiff of the lot in question, and evidenced said grant by entering, recording, and certifying the same over his genuine signature as such alcalde, in a book of entries and records of town grants, officially kept at the time in the alcalde's office for that purpose, you may not only presume a previous application by the plaintiff or some one for him, for such grant, but in addition, further, you may presume the same was made and duly delivered, unless the evidence satisfies you to the contrary. In case of such making and delivery, the plaintiff will be entitled to recover.

But if you do not find the making and delivery of such grants in manner before stated, then your verdict will be for the defendants.

94 To that portion of the said charge commencing at the word "second," and ending with the word "contrary," the defendants' counsel then and there excepted.

The jury thereupon retired, and returned a verdict for the plaintiff.

Afterwards, the reserved questions upon the tax titles came on to be heard before the court, pursuant to the agreement of the parties, whereupon, the court made the following findings in writing, which was duly filed herein.

In the District Court of the twelfth judicial district, in and for the city and county of San Francisco, State of California.

Findings of the court on the tax titles.

GEORGE DONNER, plaintiff,
against
CYRUS PALMER AND OTHERS, defendants.

Certain claims of the said defendants, respectively, to certain portions of the lands and tenements claimed by the plaintiff in this action, which said claims of the said defendants are described in their respective answers in this action, and are founded upon certain tax deeds, having been by stipulation withdrawn from the jury upon trial of the main issue in this action, and submitted to trial by the court without a jury, upon testimony to be submitted by the respect-

ive parties, and the several tax deeds hereinafter mentioned and described, with testimony relating thereto, having been submitted to this court thus sitting in that behalf without a jury, and after hearing the said parties, by their respective counsel, and all the evidence considered, the court finds as matters of fact as follows, namely:

First finding of fact.

First sub-division.—That on the first day of July, A. D. eighteen hundred and fifty-nine, Jonathan Hunt, the tax collector of the city and county of San Francisco, in the State of California, made, executed, acknowledged, and delivered to Elijah Bigelow, in pursuance of a sale made by said Hunt, as such tax collector, for delin-
95 quent taxes, for the fiscal year ending June thirtieth, eighteen hundred and fifty-nine, a certain tax deed, on its face sufficient and regular in that regard, read in evidence on the trial, and there known and marked "tax deed A," and herein referred to by that designation.

Second sub-division.—That said deed purported to convey to said Bigelow the following described parcel of land, by a description in the words and figures following, to wit: The lot being the northerly one-half of one hundred vara lot number thirty-nine; commencing at a point in the south-easterly corner of Folsom and Second streets; thence running easterly on the south side of Folsom street, one hundred varas (275 feet;) thence at right angles running southerly (137½ feet,) fifty varas; thence at right angles running westerly one hundred varas to second street, and thence at right angles running northerly on the easterly line of Second street, fifty varas, to the point of beginning.

Third sub-division.—That on the assessment roll for said fiscal year, ending June thirtieth, eighteen hundred and fifty-nine, said premises were listed and set down by the assessor of said city and county as follows: "George Donner, G. B. Bradford. Lot on south-east corner of Folsom street and Second street, two hundred and seventy-five feet on Folsom street by one hundred and thirty-seven and six-twelfths in depth, 10,000;" under and following which there is set down the following: "G. W. Hawley, building on Second street on above, 2,500;" to the right hand of which two entries there is carried out and set down as the amount of tax upon said two pieces of property, the figures "287 75," to represent and indicate the amount of tax upon said two pieces of property.

Fourth sub-division.—That the advertised delinquent list for said fiscal year is as follows: "Donner and Bradford; lot on the southwest corner of Folsom and Second streets, 275 feet on Folsom by 137½ feet deep—287 75."

Fifth sub-division.—That the delinquent list by which said property was sold by said Hunt, as aforesaid, was the same as said advertised delinquent list, with the addition of a marginal note thereto, as follows: "⅛ Bigelow, 365."

Sixth sub-division.—That there are no letters or characters upon

either said assessment roll or on said delinquent list as adver-
96 tised, nor upon the delinquent list, by which said property was sold, indicating what the figures upon said assessment roll or said delinquent lists and notes were intended to represent, whether mills, cents, dimes, dollars, eagles or double-eagles.

Seventh sub-division.—That there are neither letters nor characters upon said note to said delinquent list by which said property was sold, to indicate whether said "$\frac{1}{8}$" was intended to show that an undivided or divided one-eighth of said property was sold to said Bigelow, or what part thereof was sold.

Eighth sub-division.—That the tax collector in making said sale did not designate the part of said property sold by him for said delinquent tax, nor was the same designated by any person whomsoever at said sale by any specific description.

Ninth sub-division.—That the tax authorized by the board of supervisors of said city and county to be levied and collected for said fiscal year ending June thirtieth, eighteen hundred and fifty-nine, was $2 45 per cent. on each $100 in value of taxable property.

Tenth sub-division.—That said property described in said deed as the property sold to said Bigelow for said delinquent taxes, was at the time of said assessment and sale, a part of one hundred vara lot number thirty-nine, on the official map and survey of said city and county, but the same is not described in said assessment roll, nor in said delinquent list, nor in any of them, nor as a part, portion, or fraction of said lot number thirty-nine, nor are any metes or bounds given, except as hereinbefore set forth.

Eleventh sub-division.—That the defendant, claiming under said tax deed "A," was in the actual possession of the lands described in said deed, claiming the same adversely to said plaintiff during the fiscal year for which the tax was levied for which said premises were sold as aforesaid, and to the exclusion of the said plaintiff therefrom.

Twelfth sub-division.—That said premises were assessed to said defendant for said fiscal year; that the value of the rents and profits thereof for said fiscal year exceeded the amount of the tax levied thereon for said fiscal year; and that the said purchaser at said tax sale purchased said premises as trustee for said defendant to whom the same was assessed for said fiscal year, and who then was
97 in the occupation thereof; and afterwards in pursuance of said trust, conveyed the interest acquired by him at said sale to said defendant.

As a conclusion of law, from the facts above found in this behalf, the court finds that the claim and defense of the said defendant so claiming, under the said "Tax Deed A," is not good in law, and that the plaintiff ought to recover of and from the said defendants, the lands and tenements described in the complaint in this action.

Second finding of facts.

First sub-division.—That on the first day of July, in the year eighteen hundred and fifty-nine, Jonathan Hunt, the tax collector of the city and county of San Francisco, in the State of California, made,

executed, acknowledged, and delivered to Elijah Bigelow, in pursuance of a sale made by said Hunt as such tax collector, for delinquent taxes for the fiscal year ending June thirtieth, in the year eighteen hundred and fifty-nine, a certain tax deed, on its face sufficient and regular in that regard, read in evidence on the trial, and there marked "Tax Deed B," and herein referred to by that designation.

Second sub-division.—That said deed purported to convey to said Bigelow the following described parcel of land, by a description in the words and figures following, to wit: the lot being a portion of one hundred vara-lot number thirty-nine, commencing at a point in the northerly line of Essex Place, distant eighty-seven feet and six inches westerly from the northwest corner of Essex street and Essex place; thence at right angles running northerly, (137½ feet) fifty varas; thence at right angles running westerly, twenty-five varas (68 9-12) feet; thence at right angles running southerly, fifty varas to Essex place; and thence at right angles running easterly, twenty-five varas on the northerly line of Essex place, to the place of beginning.

Third sub-division.—That on the assessment roll for said fiscal year ending June thirtieth, eighteen hundred and fifty-nine, said premises were listed and set down by the assessor of said city and county, in the words and figures following, namely:

"D. M. Hawley. Lot on Essex place, com. 87 6-12 feet west from northwest corner of Essex street; thence west 68 9-12 feet by 137 6-12 feet in depth.

98 "Value of real estate $1,500

"Value of real improvements 2,000

Fourth subdivision.—That the advertised delinquent list for said fiscal year is as follows:

"Hawley, D. M. Lot on Essex place, com. 87½ feet west from northwest corner of Essex street; thence west, 68 9-12 feet by 137½ feet deep, with improvements, 92.53."

Fifth sub-division.—That the delinquent list by which the said property was sold by said Hunt as aforesaid, was the same as said advertised delinquent list.

Sixth sub-division.—That there are no letters or characters upon either said assessment roll or upon said delinquent lists, or any indicating what the figures upon said assessment roll or said delinquent lists were intended to represent, whether mills, cents, dimes, eagles, or double eagles.

Seventh sub-division.—That the tax authorized by the board of supervisors of said city and county to be levied and collected for said fiscal year ending June thirtieth, eighteen hundred and fifty-nine, was $2 45 per cent. on each $100 in value of taxable property.

Eighth sub-division.—That said property described in said "Tax Deed B" as the property sold to said Bigelow for said delinquent taxes, was at the time of said assessment and sale a part of one hundred vara lot number thirty-nine, on the official map and survey of

said city and county, but the same is not described in said assessment roll nor on said delinquent lists, or on any of them, or as a portion, fraction, or part of said lot number thirty-nine, nor are any metes or bounds given, except as hereinbefore set forth.

Ninth sub-division.—That the defendant, claiming under the said "Tax Deed B," was in the actual possession of the lands described in said deed, claiming the same adversely to said plaintiff during the fiscal year for which the tax was levied, for which said premises were sold as aforesaid.

Tenth sub-division.—That said premises were assessed to said defendant for said fiscal year; that the value of the rents and profits thereof for said fiscal year exceeded the amount of the tax levied thereon for said fiscal year; and that the said purchaser at
99 said tax sale purchased the said premises as trustee for said defendant, to whom the same was assessed for said fiscal year, and who then was in the occupation thereof, and afterwards, in pursuance of said trust, conveyed the interest acquired by him at said sale to said defendant.

As a conclusion of law, from the facts above found in this behalf, the court finds that the claim and defense of the said defendant, so claiming under the said "Tax Deed B," is not good in law, and that the plaintiff ought to recover of and from the said defendants the lands and tenements described in the complaint in this action.

Third finding of fact.

First sub-division.—That on the twenty-fourth day of June, in the year eighteen hundred and sixty-one, and after the commencement of this action, E. H. Washburn, the tax collector of the city and county of San Francisco, in the State of California, made, executed, acknowledged, and delivered to William Bosworth, in pursuance of a sale made by said Washburn as such tax collector for delinquent taxes for the fiscal year ending June thirtieth, in the year eighteen hundred and sixty-one, a certain tax deed, on its face sufficient and regular in that regard, read in evidence on the trial, and there known and marked "Tax Deed C," and herein referred to by that designation.

Second sub-division.—That said "Tax Deed C" purported to convey to said Bosworth the following described parcel of land, by a description in the words and figures following, to wit: "The lot of land commencing at a point on the northwesterly line of Essex place, distant one hundred and fifty-six feet three inches, southwesterly from the westerly corner of Essex street and Essex place; thence running southwesterly along the line of Essex place, ten feet; thence at right angles running southwesterly fifty var s, parallel with Essex street; and thence at right angles running northeasterly ten feet, parallel with Essex place; and thence at right angles running southeasterly fifty varas, (137½ feet,) parallel with Essex street, to the point of beginning—70×137½; being a portion of 100 vara lot number one hundred and thirty-nine."

Third sub-division.—That on the assessment roll for said fiscal year ending June thirtieth, eighteen hundred and sixty-one,
100 said premises were listed and set down by the assessor of said city and county of San Francisco, in the words and figures following, namely:

"O. W. Spencer. Lot on the northwesterly side of Essex place, com. 156 3-12 feet southwesterly from the westerly corner of Essex street; thence southwesterly 68 9-12 feet by 137½ feet deep. Value of real estate, 2,500."

Fourth sub-division.—That the advertised delinquent list for said fiscal year on which said property was advertised for sale by said tax collector for said taxes, is in the words and figures following, namely:

"O. W. Spencer. Lot on northwest side of Essex place, com. 156 3-12 feet southwest from west corner of Essex place; thence southwest 68 9-12 feet by 137½ feet deep, 75.32."

Fifth sub-division.—That the delinquent list by which said property was sold by said tax collector as aforesaid, was the same as said advertised delinquent tax list, with the addition of the following marginal notes, namely: a marginal note made at the time of the first sale had under the advertised delinquent tax list by said tax collector, in the words and figures following, namely: "9 feet Keesing, 602;" and another marginal note made at the time of a re-sale had under the advertised delinquent tax list by said tax collector on failure of the first sale, in the words and figures following, namely: "602, Bosworth 10 ft."

Sixth sub-division.—That there are no letters or characters upon either said assessment roll or on said delinquent list as advertised, or upon the said delinquent list by which the said property was sold, indicating what the figures upon said assessment roll or said delinquent lists were intended to represent, whether mills, cents, dimes, dollars, eagles, or double-eagles.

Seventh sub-division.—That there are neither letters or characters upon said notes to said delinquent list, by which said property was sold, to indicate what portion of said assessed lands the said "9 feet" and said "10 feet" in said marginal notes were intended to represent.

Eighth sub-division.—That the tax collector, in making said sale, did not designate the part of said property sold by him for said delinquent tax, nor was the same designed by any person
101 whomsoever at said sale by any specific description.

Ninth sub-division.—That the tax authorized by the board of supervisors of said city and county to be levied and collected for said fiscal year ending June thirtieth, eighteen hundred and sixty-one was $2 85 per cent. on each one hundred dollars of valuation, and no more.

Tenth sub-division.—That said property described in said deed as the property sold to said Bosworth for said delinquent taxes, was at

the time of said assessment and sale a part of one hundred vara lot, numbered thirty-nine on the official map and survey of said city and county, but the same is not described in said assessment roll, nor in said delinquent lists, nor in any of them, as a part, portion, or fraction of said lot number thirty-nine; nor are any metes or bounds given, except as hereinbefore set forth.

Eleventh sub-division.—That the defendant, claiming under said "Tax deed C," was in the actual possession of the lands described in said "Tax deed C," claiming the same adversely to said plaintiff as a trespasser against him, and to the exclusion of the said plaintiff therefrom, during all the fiscal year for which the tax was levied, for which said premises were sold as aforesaid.

Twelfth sub-division.—That said premises were assessed to said defendant for said fiscal year; that the value of the rents and profits thereof for said fiscal year exceeded the amount of the tax levied thereon for said fiscal year; and that the said purchaser at said tax sale purchased said premises as trustee for said defendant, to whom the same was assessed for said fiscal year, and who then was in the occupation thereof; and afterwards, in pursuance of said trust conveyed the interest so acquired by him at said sale to said defendant.

As a conclusion of law, from the facts above found in this behalf, the court finds that the claim and defense of the said defendant, claiming under the said "Tax deed C," is not good in law, and that the plaintiff ought to have and recover of and from the said defendant the lands and tenements described in the complaint in this action.

Fourth finding of facts.

First sub-division.—That on the first day of April, in the
102 year eighteen hundred and sixty-one, E. H. Washburn, the tax collector of the city and county of San Francisco, in the State of California, made, executed, acknowledged, and delivered to W. B. Peake, in pursuance of a sale made by said Washburn as such tax collector, for delinquent taxes for the fiscal year ending June thirtieth, in the year eighteen hundred and sixty, a certain tax deed, on its face sufficient and regular in that regard, read in evidence on the trial, and there known and marked as "Tax deed D," and herein referred to by that designation.

Second sub-division.—That said deed purported to convey to said Peake the following described parcel of land, by a description in the words and figures following, to wit: the lot of land commencing at a point on the north-westerly line of Essex place, distant one hundred and fifty-six feet three inches south-westerly from the westerly corner of Essex street and Essex place, and thence running southwesterly along Essex place, thirty-four feet four and one-half inches; thence at right angles, running northwesterly fifty varas, or one hundred and thirty-seven feet six inches; thence at right angles northeasterly thirty-four feet four and a half inches, and thence at right angles running southeasterly fifty varas, to the point of beginning, 34 4½-12 + 137 6-12 feet.

Third sub-division.—That on the assessment roll for said fiscal year, ending June thirtieth, in the year eighteen hundred and sixty said premises were listed and set down by the assessor of said city and county, in the words and figures following, namely:

"O. W. Spencer. Lot on Essex place, commencing 156 3-12 feet westerly from the northwesterly corner of Essex street; thence westerly 68 9-12 feet by 137½ feet deep.

" Value of real estate..... $1,500

" Value of improvements..... 300"

Fourth sub-division.—That the advertised delinquent list for said fiscal year, is as follows, namely:

"O. W. Spencer. Lot on Essex place, commencing 156 3-12 feet westerly from the northwesterly corner of Essex street; thence westerly 68 9-12 feet by 137½ feet deep, and improvements. 6039"

Fifth sub-division.—That the delinquent list, by which said property was sold by said tax collector, as aforesaid, was the same as said advertised delinquent tax list, with the addition of the following marginal note made at the time of the said tax sale, in the words and figures following, namely: "½ Cole, No. 1629."

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Sixth sub-division.—That there are no letters or characters upon either said assessment roll, or on said delinquent list as advertised, or upon the said delinquent list by which the said property was sold, indicating what the said figures upon said assessment roll, or said delinquent list, were intended to represent, whether mills, cents, dimes, eagles, or double eagles.

Seventh sub-division.—That there are neither letters nor characters upon said note to said delinquent list, by which said property was sold, indicating what portion of said assessed lands the said "½ Cole, No. 1629," in said marginal note, was intended to represent.

Eighth sub-division.—That the tax collector, in making such sale, did not designate the part of said property sold by him for said delinquent tax, nor was the same designated by any person whomsoever, at said sale by any specific description.

Ninth sub-division.—That on the ninth day of April, in the year eighteen hundred and fifty-nine, by an order theretofore passed by the board of supervisors of said city and county of San Francisco, and approved on that day, taxes were levied upon the taxable property in said city and county, at the rate of $2 45 per cent. on each $100 in valuation of such taxable property; and that an order passed by the said board of supervisors, on the twenty-fifth day of April, in the year eighteen hundred and fifty-nine, and approved the next day thereafter, purported to repeal the said order first hereinabove mentioned; and an order passed by the said board of supervisors, on the second day of May, in the year eighteen hundred and fifty-nine, and approved on the same day, a tax of $2 70 per cent. on each $100 in valuation of property in said city and county, was levied, besides a levy of $158,459 03 as a special tax, all of which said taxes so levied purported to be for lawful purposes.

Tenth sub-division.—That said property described in said "Tax deed D," as the property sold to said Peake for said delinquent taxes

was, at the time of said assessment and sale a part of one hundred vara lot, numbered thirty-nine on the official map and survey
104 of said city and county, but the same is not described in said assessment roll, nor in said delinquent lists, nor in any of them, as a part, portion, or fraction of said lot number thirty-nine, nor are any metes or bounds given except as hereinbefore set forth.

Eleventh sub-division.—That the defendant, claiming under "Tax deed D," was in the actual possession of the lands described in said "Tax deed D," claiming the same adversely to said plaintiff as a trespasser against him, and to the exclusion of the said plaintiff therefrom, during the fiscal year for which the tax was levied for which said premises were sold as aforesaid.

Twelfth sub-division.—That said premises were assessed to said defendant for said fiscal year; that the value of the rents and profits thereof for said fiscal year exceeded the amount of the tax levied thereon for said fiscal year; and that the said purchaser at said tax sale purchased said premises as trustee for said defendant, to whom the same was assessed for said fiscal year, and who was then in the occupation thereof; and afterwards, in pursuance of said trust, conveyed the interest so acquired by him at said sale to said defendant.

As a conclusion of law, from the facts above found in this behalf, the court finds that the claim and defense of the said defendant, claiming under the said "Tax deed D," is not good in law, and that the plaintiff ought to have and recover of and from the said defendant the lands and tenements described in the complaint in this action.

Fifth finding of facts.

First sub-division.—That on the sixteenth day of July, in the year eighteen hundred and sixty, Jonathan Hunt, the tax collector of the city and county of San Francisco, in the State of California, made, executed, acknowledged, and delivered to W. A. Palmer, in pursuance of a sale made by said Hunt, as such tax collector, for delinquent taxes for the fiscal year ending June thirtieth, in the year eighteen hundred and sixty, a certain tax deed, on its face regular and sufficient in that regard, read in evidence on the trial, and then known and marked as "Tax deed E," and herein referred to by that designation.

Second sub-division.—That said "Tax deed E" purported to convey to said W. A. Palmer the following described parcel of
105 land, by a description in the words and figures following, namely: A lot of land commencing on the northeasterly side of Second street, one hundred and thirty-seven feet six inches southeasterly from the southerly corner of Second and Folsom streets; running thence southeasterly along Second street, sixty feet one inch; thence at right angles, northeasterly, one hundred and thirty-seven feet six inches; thence at right angles, northwesterly, sixty feet one inch; and thence at right angles, southwesterly, one hundred and thirty-seven feet six inches to the place of beginning.

Third sub-division.—That on the assessment roll for said fiscal year

ending June thirtieth, eighteen hundred and sixty, said premises were listed and set down by the assessor of said city and county in the words and figures following, namely:

"Cyrus Palmer. Lot on Second street, commencing one hundred and thirty-seven and a half feet southerly from the southeasterly corner of Folsom street; thence, southerly, one hundred and thirty-seven and a half feet, by one hundred and thirty-seven and one-half feet deep.

"Value of real estate $4,000
" improvements thereon 1,000

Fourth sub-division.—That the advertised delinquent list for said fiscal year is as follows, namely:

"Cyrus Palmer. Lot on Second street, commencing one hundred and thirty-seven and a half feet southerly from the southeasterly corner of Folsom street; thence southerly one hundred and thirty-seven and a half feet, by one hundred and thirty-seven and a half feet deep, and improvements, 166 87.

Fifth sub-division.—That the delinquent list by which said property was sold by said tax collector as aforesaid, was the same as the said advertised delinquent tax list with the addition of the following marginal note, made at the time of the said tax sale, in the word and figures following, namely: "Knox 1 No. 1,625."

Sixth sub-division.—That there are no letters or characters upon either said assessment roll, or on said delinquent list as advertised, or upon the said delinquent list, by which the said property was sold, indicating what the said figures upon said assessment roll or said delinquent lists were intended to represent, whether mills, cents, dimes, eagles, or double eagles.

106 Seventh sub-division.—That there are neither letters nor characters upon said note to said delinquent list, by which said property was sold, indicating what portion of said assessed lands this said "Knox $\frac{1}{8}$ No. 1,625" was intended to represent.

Eighth sub-division.—That the tax collector in making such sale did not designate the part of said property sold by him for said delinquent tax, nor was the same designated by any person whomsoever at said sale by any specific description.

Ninth sub-division.—That on the ninth day of April, in the year eighteen hundred and fifty-nine, by an order theretofore passed by the board of supervisors of said city and county of San Francisco, and approved on that day, taxes were levied upon the taxable property in said city and county at the rate of $2 45 per cent, on each $100 in valuation of such taxable property; and that an order passed by the said board of supervisors on the twenty-fifth day of April, in the year eighteen hundred and fifty-nine and approved the next day thereafter, purported to repeal the said order first hereinbefore mentioned; and an order passed by the said board of supervisors on the second day of May, in the year eighteen hundred and fifty-nine, and approved on the same day, a tax of $2 70 per cent. on each $100 in valuation of property in said city and county were levied, besides a levy of $158,459 03 as a special tax—all which said taxes so levied purported to be for lawful purposes.

Tenth sub-division.—That said property described in said "Tax deed E," as the property sold to said W. A. Palmer for said delinquent taxes, was at the time of said assessment and sale a part of one hundred vara lot, numbered thirty-nine on the official map and survey of said city and county, but the same is not described in said assessment roll, nor in said delinquent list, nor in any of them as a part, portion, or fraction of said lot number thirty-nine, nor are any metes or bounds given, except as hereinbefore set forth.

Eleventh sub-division.—That the defendant, claiming under said "Tax deed E," was in the actual possession of the lands described in said "Tax deed E," claiming the same adversely to said plaintiff as a trespasser against him, and to the exclusion of the said plaintiff therefrom, during the fiscal year for which the tax was levied for which said premises were sold as aforesaid.

107 Twelfth sub-division.—That said premises were assessed to said defendant for said fiscal year; that the value of the rents and profits thereof for said fiscal year exceeded the amount of the tax levied thereon for said fiscal year; and that the said purchaser at said tax sale purchased said premises as trustee for said defendant, to whom the same were assessed for said fiscal year, and who was then in the occupation thereof, and afterwards, in pursuance of said trust, conveyed the interest so acquired by him at said sale to said defendant.

As a conclusion of law, from the facts above found in this behalf, the court finds that the claim and defense of the said defendant, claiming under the said "Tax deed E," is not good in law, and that the plaintiff ought to have and recover of and from the said defendant the lands and tenements described in the said complaint in this action.

Sixth finding of facts.

First sub-division.—That on the eleventh day of July, in the year eighteen hundred and sixty, Jonathan Hunt, the tax collector of the city and county of San Francisco, in the State of California, made, executed, and delivered to G. T. Hawley, in pursuance of a sale made by said Hunt, as such tax collector, for delinquent taxes for the fiscal year, ending June thirtieth, in the year eighteen hundred and sixty, a certain tax deed, on its face regular and sufficient in that regard, read in evidence on the trial, and there known and marked as "Tax deed F," and herein referred to by that description.

Second sub-division.—That said "Tax deed F," purported to convey to said Hawley the following described parcel of land by a description in the words and figures following, namely: "The lot of land commencing at a point on the easterly corner of Folsom and Second streets, and thence running northeasterly along Folsom street, fifty varas; thence at right angles running southeasterly, fifty varas; thence at right angles running southwesterly, fifty varas; and thence at right angles running northwesterly, fifty varas (137½ feet feet) along Second street to the place of beginning; being the southwesterly one-quarter of 100 vara lot No. 39."

Third sub-division—That on the assessment roll for said fiscal year ending June thirtieth, eighteen hundred and sixty, said premi-
108 ses were listed and set down by the assessor of said city and county in the words and figures following, namely:

"George Donner; also,

"G. B. Bradford. Lot on the southeasterly corner of Folsom and Second streets, 275 feet on Folsom street by 137½ feet on Second street.

"Value of real estate..... 10,000
"Improvements thereon..... 100
"C. A. Hawley..... 2,000

Fourth sub-division.—That the advertised delinquent list for said fiscal year is as follows, namely:

"Donner and Bradford,

"Lot on the southeasterly corner of Folsom and Second streets, 275 feet on Folsom street by 137½ feet deep with improvements, 403.12."

Fifth sub-division.—That the delinquent list by which said property was sold by said tax collector as aforesaid, was the same as the said advertised delinquent list with the addition of the following marginal notes, made at the time of the tax sales had under the same, in the words and figures following, namely:

"6 inches, J. M. Josselyn, No. 1,626."

"Resale 22d Dec., one ft. Spark."

"Dec. 24th, ½ G. F. Hawley, $405.12."

Sixth sub-division.—That there are no letters or characters upon either said assessment roll, or on said delinquent list as advertised, or upon the said delinquent list, by which the said property was sold, indicating what the said figures upon the said assessment roll, or said delinquent lists were intended to represent, whether mills, cents, dimes, dollars, eagles, or double-eagles, except the dollar mark ($) before the figures 405.12 in the fifth subdivision next hereinbefore mentioned.

Seventh sub-division.—That there are neither letters nor characters upon said notes to said delinquent list by which said property was sold, indicating what portion of said assessed lands the said notes or any of them were intended to represent.

Eighth sub-division.—That the tax collector in making such sale, did not designate the part of said property sold by him for said delinquent tax, nor was the same designated by any person
109 whomsoever at said sale, by any specific description.

Ninth sub-division.—That on the ninth day of April, in the year eighteen hundred and fifty-nine, by an order theretofore passed by the board of supervisors of said city and county of San Francisco, and approved on that day, taxes were levied upon the taxable property in said city and county at the rate of $2.45 per cent. on each $100 in valuation of such taxable property; and that an order passed by the said board of supervisors, on the twenty-fifth day of April, in the year eighteen hundred and fifty-nine, and approved the next day thereafter, purported to repeal the said order first hereinbefore-mentioned; and an order passed by the said board of supervisors on

the second day of May, in the year eighteen hundred and fifty-nine, and approved on the same day, a tax of $2.70 per cent. on each $100 in valuation of property in said city and county was levied, besides a special tax of $158,459 03; all which said taxes so levied purported to be for lawful purposes.

Tenth sub-division.—That said property described in said "Tax deed F," as the property sold and conveyed to said Hawley for delinquent taxes, was at the time of said assessment and sale, a part of one hundred vara lot, number thirty-nine on the official map and survey of the said city and county; but the same is not described in said assessment roll, nor in said delinquent lists, nor in any of them as a part, portion, or fraction of said lot number thirty-nine, nor are any metes or bounds given, except as hereinbefore set forth.

Eleventh sub-division.—That the defendant claiming under the said "Tax deed F," was in the actual possession of the lands described in said "Tax deed F," claiming the same adversely to said plaintiff as a trespasser against him, and to his exclusion therefrom during all the fiscal year for which the tax was levied for which said premises were sold as aforesaid.

Twelfth sub-division.—That said premises were assessed to said defendant as aforesaid during said fiscal year; that the value of the rents and profits thereof for said fiscal year, exceeded the amount of the tax levied thereon for the said fiscal year; and that the said purchaser at said tax sale purchased said premises as trustee for said defendant, to whom the same were assessed for said year, and who was then in the occupation thereof; and afterwards, in pur-
110 suance of said trust, conveyed the interest so acquired by him at said sale, to said defendant.

As a conclusion of law, from the facts above found in this behalf, the court finds that the claim and defense of the said defendant, claiming under the said "Tax deed F," is not good in law, and that the plaintiff ought to have and recover of and from the said defendant the lands and tenements described in the complaint in this action.

Seventh finding of facts.

First sub-division.—That on the twenty-eighth day of June, in the year eighteen hundred and sixty, Jonathan Hunt, the tax collector of the city and county of San Francisco, in the State of California, made, executed, and delivered to George M. Josselyn, in pursuance of a sale made by said Hunt, as such tax collector, for delinquent taxes for the fiscal year ending June thirtieth, in the year eighteen hundred and sixty, a certain tax deed on its face regular and sufficient for, in that regard, read in evidence on the trial, and there known and marked as "Tax deed G," and herein referred to by that description.

Second sub-division.—That said "Tax deed G" purported to convey to said Josselyn the following described parcel of land, by a description in the words and figures following, namely: "The lot of land on the northwesterly line of Essex place, commencing eighty-seven

feet six inches southwesterly from the westerly corner of Essex street and Essex place; thence running southwesterly sixtyeight feet nine inches, on Essex place; thence at right angles northwesterly fifty varas (137½ feet); thence at right angles northeasterly sixty-eight feet nine inches; and thence at right angles southeasterly fifty varas to the point beginning; being a portion of 100 vara lot No. 39."

Third sub-division.—That on the assessment roll of said fiscal year ending June thirtieth, eighteen hundred and sixty, said premises were listed and set down by the assessors of said city and county, in the words and figures following, namely:

"D. M. Hawley, lot on Essex place com. 87½ feet westerly from the northwesterly corner of Essex street; thence westerly, 68 $\frac{6}{12}$ feet by 137½ feet deep.

111 "Value of real estate 1,500
" " " improvements thereon ..... 1,700"

Fourth sub-division.—That the advertised delinquent list for said fiscal year, is as follows, namely:

"D. M. Hawley. Lot on Essex place, commencing 87½ feet westerly from the northwesterly corner of Essex street; thence westerly 68 $\frac{9}{12}$ feet by 137½ feet deep and improvements ..... 106.97"

Fifth sub-division.—That there are no letters or characters upon either said assessment roll, or on said delinquent list as advertised indicating what the said figures upon the said assessment roll or said delinquent list were intended to represent, whether mills, cents, dimes, dollars, eagles, or double eagles.

Sixth sub-division.—That on the ninth day of April, in the year eighteen hundred and fifty-nine, by an order theretofore passed by the board of supervisors of said city and county of San Francisco, and approved on that day, taxes were laid on the taxable property of the said city and county at the rate of $2.45 per cent. on each $100 in valuation of such taxable property; and that an order passed by the said board of supervisors on the twenty fifth day of April, in the year eighteen hundred and fifty-nine, and approved the next day thereafter, purported to repeal the said order first hereinbefore-mentioned; and by an order passed by the said board of supervisors on the second day of May, in the year eighteen hundred and fifty-nine, and approved on the same day, a tax of $2.70 per cent. on each $100 in valution of property in said city was levied, and also a special tax of $158,459 03; all of which said taxes so levied purported to be for lawful purposes.

Seventh sub-division.—That said property described in said "Tax deed G," as the property sold and conveyed to the said Josselyn for said delinquent taxes was, at the time of said assessment and sale, a part of one hundred vara lot, numbered thirty-nine on the official map and survey of the said city and county, but the same is not described in said assessment roll or delinquent list, as a part, portion or fraction of said lot number thirty-nine, nor are any metes or bounds given, except as hereinbefore set forth.

Eighth sub-division.—That the defendant claiming under the said

"Tax deed G," was in the actual possession of the lands des-
112 cribed therein, claiming the same adversely to said plaintiff, as a trespasser against him, and to his exclusion therefrom during all the fiscal year for which the tax was levied for which said premises were sold as aforesaid.

Ninth sub-division.—That said premises were assessed to said defendant as aforesaid during said fiscal year; that the value of the rents and profits thereof during said fiscal year exceeded the amount of the tax levied thereon for said fiscal year; and that the said purchaser, at the said tax sale, purchased said premises as trustee for said defendant, to whom the same were assessed for said fiscal year, and who was then in the occupation thereof, and afterwards, in pursuance of said trust, conveyed the said interest so acquired by him at said sale to said defendant.

As a conclusion of law, from the facts above found in this behalf, the court finds that the claim and defense of the said defendant, claiming under the said "tax deed G," is not good in law, and that the plaintiff ought to have and recover from the said defendant the land and tenements described in the complaint in this action.

In the District Court of the twelfth judicial district in and for the city and county of San Francisco, State of California.

Findings as to intervention.

GEORGE DONNER, plaintiff,
vs.
CYRUS PALMER *et als*, defendants, and
Henry W. Bradley, intervenor.

In the matter of the intervention of Henry W. Bradley herein—

The intervention of said Henry W. Bradley in said case having, by agreement of counsel for all the parties to said cause, been withdrawn from the jury and tried before the court, and the court having heard the allegations and proofs of the parties, and the arguments of counsel, finds the following facts, to wit:

That on the nineteeth day of July, A. D. 1847, George Hyde was the alcalde of the then pueblo now city of San Francisco;
113 that on said day the said George Hyde, as such alcalde, duly granted to said plaintiff, George Donner, one hundred vara lot number thirty-nine, (39) lying in said city of San Francisco, in the State of California.

That on the tenth (10) day of April, A. D. 1858, said Donner, by a certain conveyance and contract, bearing date on said last-mentioned day, executed by him and one John Yontz, conveyed to said Yontz an undivided one-third of said lot, upon the conditions set forth in said contract.

That on the twelfth day of October, A. D. 1858, the said George Donner and said John Yontz, by their certain deed bearing date on said day last aforesaid, conveyed to P. C. Lander an undivided one-fourth of said lot; which said deed was duly acknowledged and

recorded in the office of the recorder of said county of San Francisco, on the fourteenth day of October, A. D. 1858.

That said P. C. Lander, by his deed, duly acknowledged and recorded, dated July 28th, 1860, conveyed said undivided one-fourth of said lot so conveyed to him as aforesaid, to James Ross.

That said James Ross, by his deed dated March 3d, 1862, duly conveyed to said plaintiff, George Donner, all the interest held or owned by him in said lot.

That on the 15th day of August, 1865, James C. Cobb recovered a judgment against said John Yontz in the District Court of the third judicial district, in and for the county of Santa Clara, State of California, for the sum of $796, on which last-mentioned day said judgment was docketed in said Third District Court, and a transcript thereof duly filed and recorded in the office of the recorder of said county of San Francisco, on the 10th day of December, A. D. 1858; that on the 15th day of November, A. D. 1859, an execution was issued upon said judgment, under and by virtue of which Charles Doane, the then sheriff of said city and county of San Francisco, levied upon all the right, title, and interest in said Yontz in said lot, and sold the same on the 28th day of March, 1860, to Joseph G. Eastland; that no redemption was made from said sale, and the interest of said Yontz, so sold as aforesaid, was duly conveyed by said sheriff to said Eastland, by deed bearing date on the 5th day of February, A. D. 1861, and that said Eastland, by deed dated December 19th, 1861, conveyed said interest, so purchased by him as aforesaid, to H. W. Bradley, said intervenor.

That on the 8th day of January, A. D. 1859, an action was instituted
114 in said Third District Court for said county of Santa Clara, by Mary Ann Williams against John Yontz et al., to recover from said Yontz et al., the sum of $— upon an express contract for the saiddirect payment of money made in this State; that an attachment was duly issued in said cause against the said Yontz et al., and on the said 8th day of January, duly levied upon all the right, title, and interest of said Yontz in said lot, and duly filed and recorded on said last-named day in said recorder's office of San Francisco county; that on the 31st day of March, A. D. 1859, a judgment was duly entered in said cause last aforesaid, in said Third District Court against said John Yontz et al., in favor of said Mary Ann Williams, a transcript of which judgment was duly filed and recorded in the office of the county recorder of said county of San Francisco, on the 5th day of April, 1859.

That on the 22d day of January, A. D. 1861, an execution was duly issued upon said judgment last aforesaid, against said John Yontz et al., which said execution was duly levied by the said sheriff of San Francisco, upon all the right, title, and interest had and held by said Yontz, in or to said lot, at the date of the levy of said attachment, and at the time of the filing and recording of said judgment last aforesaid in said recorder's office.

That on the 9th day of March, A. D. 1861, the said interest of sai Yontz, so levied upon as last aforesaid, was by said sheriff duly sol

to said plaintiff herein. George Donner; that no redemption was made from said last-mentioned sale, and the said sheriff, after the expiration of six months from the making thereof, duly conveyed to George Donner the interest so levied upon and sold to him by said sheriff, as aforesaid.

And the court further finds from the complaint in this action, that plaintiff, Donner, only claims to recover as against the defendants, the undivided three-fourths of said one hundred vara lot.

And the court finds as conclusions of law, that at the date of the commencement of this action, and at the date of the filing of said petition herein by said intervenor, Henry W. Bradley, the said intervenor had no right, title or interest in or to the undivided three-fourths of said lot number thirty-nine (39) sued for by said plaintiff, and sought to be recovered by him in this action.

That said intervenor had no interest in the success of the said plaintiff in this action.

That said intervenor has no interest in the success of the defendant in this action.

115 That said intervenor has no interest against both the plaintiff and defendant herein, and is not entitled to intervene in this action, and that said plaintiff is entitled to have and recover of and from said intervenor all costs herein occasioned by the said invention, and judgment is ordered to be entered accordingly.

(Signed) O. C. PRATT, *Judge.*

[Indorsed] Filed September 1st, 1865.

WM. LOEWY, *Clerk,*
Per ANDREW D. SMITH,
Deputy Clerk.

Afterwards the question between the intervenor and the plaintiff came on for hearing, and the court rendered a decision in favor of plaintiff and against said intervenor.

The defendants afterwards, and in due time, gave to the plaintiff's attorney due notice of intention to move for a new trial, on the following grounds, to wit:

I. Insufficiency of the evidence to justify the verdict, and that it is against law.

II. Error in law occurring at the trial and excepted to by the defendants.

III. Newly-discovered evidence, material for defendants, and which could not with reasonable diligence have been discovered and produced on the trial.

I. And the defendants now specify the particulars in which the evidence is insufficient to justify the verdict, as follows, viz.:

1st. There was no sufficient evidence to show that any grant for the said lot in controversy was ever signed by any alcalde, or delivered to said plaintiff or any one for him.

2d. There was no sufficient evidence to show the delivery of any grant for said lot to said McDonald for the plaintiff, as alleged in the complaint.

3d. There was no sufficient evidence, or evidence tending to prove that plaintiff or any one on his behalf ever had possession of the alleged grant for said lot.

4th. There was no sufficient evidence to show that the plaintiff ever had any title whatever to said lot.

5th. It appeared in evidence that the plaintiff was incapable of taking or receiving grant of said lot, or of fulfilling the necessary
116 conditions annexed to all such grants, because of his infancy.

6th. The primary evidence of any such grant was not produced, nor its loss or destruction shown, nor its absence in any manner accounted for.

7th. The evidence showed the defendants to be the owners of the said lot under and by virtue of the so-called Van Ness ordinance and the statute in that case made and provided.

8th. The evidence showed the defendants to be owners of the said lot under and by virtue of the tax-titles referred to in the findings of the court.

9th. There was no sufficient evidence to show that the title of the pueblo of San Francisco, under which the plaintiff claimed title, ever passed to the plaintiff.

II. And for errors of law occurring at the trial and excepted to by the defendants, the following particular errors, upon which defendants will rely, are specified, viz.:

1st. The court erred in admitting in evidence the said entry in said "Book A, of Orignal Grants," as to said lot No. 39 herein above contained on page 47.

2d. The court erred in overruling each and every of the objections made to the introduction of said entry in evidence last above referred to.

3d. The court erred in denying the defendant's motion for a nonsuit.

4th. The court erred in refusing to give instructions requested by defendants' counsel, and numbered 2d, 3d and 4th.

5th. The court erred in that part of its general charge to the jury, commencing at the word "Second," and ending with the word "contrary."

6th. The court erred in its findings upon the question of tax-titles submitted for decision after the verdict, in not finding its conclusions of law in favor of defendants instead of in favor of plaintiff.

III. And as newly-discovered evidence, the defendants refer to the annexed affidavits, marked A and B respectively, which affidavits are made part of this statement.

117 And upon the foregoing grounds the defendants move court for a new trial herein.

September, 1865.

E. W. F. SLOAN.
S. F. REYNOLDS.
S. M. WILSON,
Att'ys for Defendants.

We admit service of the foregoing statement on motion for new trial, and that the same was filed in due time.

SAN FRANCISCO, *September*, 1855.

S. O. HOUGHTON,
Plff's Attorney.
J. W. DWINELLE,
Of Counsel.

In the foregoing statement where the cross lines, drawn across the entries in Book A, are described as lines of cancellation, the word cancellation is used as merely descriptive of the character of the lines and not as to the legal effect of them, and not intended to estop the respondents from raising the question as to the legal effect of any such lines drawn across any such entry.

The foregoing statement is hereby settled and agreed to by the parties, the annexed affidavits being a part of the statement.

S. O. HOUGHTON,
Att'y for Plaintiff.
E. W. F. SLOAN
and S. M. WILSON,
Att'y for Defendants.

"*A.*"

In the District Court of the twelfth judicial district, State of California.

GEORGE DONNER
vs.
CYRUS PALMER *et al.*

In the City and County of San Francisco:

Edwin Bryant, of lawful age, being duly sworn, deposes and says, that on the seventeenth day of May, A. D. 1847, and for a long time before and afterwards, until the or about the tenth day of June, A. D. 1847, he was alcalde of San Francisco, and during that
118 period fulfilled the duties of alcalde in said San Francisco; that during the time he received a large number of petitions for grants of lots in said San Francisco, and made a great many grants—that some were paid for by the applicants, or persons on their behalf, and the grants delivered, and some were never paid for or delivered; that in the making of grants this affiant, as a general rule, caused the grants to be prepared for delivery in the usual form, and caused corresponding entries to be made in a book kept for that purpose on a system inaugurated and kept up by the alcaldes here, the entries in which book were made, not as the grant itself, but as a register merely of the transactions performed or intended to be performed—and the entries were usually made in the record book, before the paper writing or grant itself was delivered; that such delivery was never made until the proper municipal fee was paid, after which the grant was delivered, and from such actual delivery only was con-

sidered and intended to have any effect—that no grant was intended ever to take effect until the actual delivery was made to the grantee or some one for him; that during the term of office of this affiant, one James F Reed, a guardian of George Donner, a boy well known to this affiant, petitioned for a grant of the one hundred vara lot numbered thirty-nine, in the town of San Francisco—and that a grant to said George Donner was consented to be made on the usual terms and conditions, and on the payment of the usual fees—and that a grant was drawn up in due form ready to be signed and executed to said George Donner; that at the time of presenting the petition to this affiant, he urged upon said Reed the necessity of paying the fees for said George Donner, and that he must see that the usual municipal fees were paid, but said Reed never paid the same; that no one ever paid the said fees, or any part of them, to this affiant for such grant, and the grant was never signed or delivered by this affiant to said Reed nor to said George Donner, or any one for him; but that on the termination of the term of office of this affiant, the same remained unpaid and the grant delivered, and the petition and grant were, together with a good many similar petitions of other parties and other unexecuted grants, delivered over by this affiant to George Hyde, esq., the successor of this affiant in the said office of alcalde; that it was the custom of the office whilst this affiant held it, and also of his predecessors, to cancel entries on the record books referred to in cases where ultimately the fees were not paid or grant delivered, but that in some instances the entries remained uncanceled in
119 the record books, although the grants never were delivered and the lots were regranted to other parties.

Signed EDWIN BRYANT.

Sworn to and subscribed before me this second day of May, A. D. 1865.

(Signed) ALFRED BARSTOW, [L. S.]
Notary Public.

"*B.*"

In the District Court of the twelfth judicial district, State of California.

GEORGE DONNER
vs.
CYRUS PALMER *et al.*

In the City and County of San Francisco:

Cyrus Palmer, of lawful age, being duly sworn, deposes and says, that he is one of the defendants in the above-entitled action, that he knows Edwin Bryant, whose affidavit is hereto annexed, that said Bryant was out of the State for a number of years before the commencement of this action, and continued absent therefrom until after the verdict of the jury herein, and during the period aforesaid resided,

as this affiant is informed by said Bryant, and verily believes, in the city of Louisville, Kentucky; and that the defendants herein had no opportunity of talking with him, and ascertaining his recollection of the matters stated in his affidavit, until his temporary visit here in the months of April and May last, and after the verdict was rendered herein; that at the time the defendants for the first time ascertained from the said Bryant the facts set forth in his said affidavit hereunto annexed, and which were ascertained too late to be used on the said trial, the said verdict having been rendered before the said Bryant arrived in California on his said visit. That this affiant is informed and believes that there is no law in Kentucky, where said Bryant has resided, as aforesaid, and never has been any, by which a witness there resident can be compelled to give his deposition to be used in other States; but that since said Bryant has visited the State of California, and whilst here, he has promised to give his deposition and evidence in this case at any time hereafter, when a commission shall be sent to said Louisville, Kentucky, his present residence, for that purpose.

And this affiant further avers, that he and the other defend-
120 ants were advised by counsel, and believed, that under the pleadings in this case it would be necessary for the plaintiff to prove, in order to entitle him to recover, a delivery of the said original grant, and a payment of the municipal fees to the alcalde; and that on the former trial of this cause the plaintiff introduced in evidence a certain paper marked A, and referred to by the witness Brannan on this trial, and that the principal question on said first trial was whether said paper, purporting to be a grant to the plaintiff, was ever signed by any alcalde, and whether, if signed, the same had ever been delivered by the alcalde to said plaintiff, or any one for him; and that the defendants, and their respective counsel, believed that the same evidence would be presented on the last trial, especially as depositions were taken by the plaintiff before the trial to prove the same general facts, which depositions were not used by the plaintiff on the said last trial, but said paper marked A, and said depositions, wholly omitted, by reason of which defendants and their counsel did not deem the evidence of any other witnesses than they had procured in the case as formerly tried necessary; and this affiant knows of no other witness by which the same facts can be proven as stated in the affidavit of said Bryant.

(Signed) CYRUS PALMER.

Subscribed and sworn to before me, this twenty-second day of September, 1865.

(Signed) ALFRED BARSTOW, [L. S.]
Notary Public

The motion for a new trial having been submitted to the court, the same was taken under advisement, and several days thereafter the court made the following order.

121 *Order denying motion for new trial.*

In the District Court of the twelfth judicial district, State of California, in and for the city and county of San Francisco.

October term, Saturday, Dec. 16th, 1865. Present, Hon. O. C. Pratt, Judge.

GEORGE DONNER, plaintiff,
vs.
CYRUS PALMER *et al.*, defendants.

In this cause it is now ordered by the court that the defendants' motion for a new trial be, and the same hereby is, denied, and further proceedings herein be stayed for the period of ten days.

I hereby certify the foregoing to be a full, true, and correct copy of an order entered on the minutes of said Twelfth District Court, in the above-entitled cause.

Attest my hand and the seal of said District Court, this eighth day of January, A. D. 1866.

WM. LOEWY, *Clerk.*
By ANDREW D. SMITH, *D. C.*

Stipulation as to statement.

In the District Court of the twelfth judicial district, in and for the city and county of San Francisco, State of California.

GEORGE DONNER
vs.
CYRUS PALMER *et al.*

It is stipulated that on the appeal to be taken from the judgment in this cause, the statement already settled for motion for new trial may be used the same as if judgment had been entered up
122 before said statement was prepared or filed, and the same as if the same had been prepared and settled for appeal from said judgment, Dec. 20th, 1865.

(Signed) S. O. HOUGHTON,
Attorney for Plaintiff.
S. M. WILSON,
For Defendants.

Indorsed: Filed December 21st, 1865.

WM. LOEWY, *Clerk.*
Per G. C. LETCHER, *D. C.*

Notice of appeal.

In the District Court of the twelfth judicial district of the State of California, in and for the city and county of San Francisco.

GEORGE DONNER
vs.
CYRUS PALMER *et al.*

You will please take notice that the defendants in the above-entitled action hereby appeal to the Supreme Court of this State from the judgment therein made and entered, in the said District Court, on the twentieth day of December, A. D. 1865, in favor of said plaintiff against said defendants, and from the whole thereof, and each and every part thereof, and also from the order denying the motion for a new trial therein made and entered on the sixteenth day of December, 1865.

Dated San Francisco, this 21st day of December, A. D. 1865.

Yours, etc.,

E. W. F. SLOAN,
S. M. WILSON,
And S. F. REYNOLDS,
Attorneys for Appellants.

To the CLERK of said District Court, and Shafter, Goold & Dwinelle, and S. O. Houghton, attorneys for respondents, and E. A. Lawrence, attorney for intervenor.

Indorsed: Filed December 21st, 1865, at 10 o'clock, a. m.
WM. LOEWY, *Clerk*.
Per G. C. LETCHER, *D. C.*

123 On the twenty-first day of December, A. D. 1865, and in due time, a notice of appeal, of which the above is a copy, was duly filed in the office of the clerk of said District Court, and afterwards, on the same day, a copy thereof, with notice of filing, was duly served on the attorneys for the intervenor and plaintiff, respectively, which said last notice, with the acceptance of service thereon by the attorneys for plaintiff and intervenor, was afterwards, on the same day, also duly filed in the office of the said clerk.

An undertaking on appeal, in due time and in due form, was executed, according to the statute, on the part of the appellants, and duly filed with the clerk of said court, on the twenty-second day of December, 1865.

Stipulation.

GEO. DONNER
vs.
CYRUS PALMER *et al.*

The foregoing is a correct transcript on appeal in this case, agreed to by the attorneys for the respective parties, and that the proper undertaking on appeal has been filed.

January —, A. D. 1865.

124 DONNER *vs.* PALMER *et al.* } No. 894.

Action to recover possession of an undivided three-fourths interest in 100 vara lot No. 39, in the city of San Francisco. The plaintiff had judgment, and the defendants appealed.

The complaint alleges, that on July 19, 1847, George Hyde, then alcalde of the pueblo of San Francisco, now city of that name, granted the lot in question to the plaintiff, who was then an infant of the age of ten years; that the grant was delivered to one McDonald, then acting as guardian of the plaintiff, for the use and benefit of the plaintiff, whereby he became seized in fee of the lot. The making of the grant and seizing of the plaintiff are denied by the appellants.

The only evidence of a grant introduced by the plaintiff was a written entry contained in a book entitled "Book A of original grants," which was produced in court by the county recorder, and proved to be the record of the transactions of the alcaldes of San Francisco, in relation to the granting of town lots, from the acquisition of California by the United States until the adoption of the constitution.

The following is a copy of the entry:

"*Lot No.* 39.

"Whereas, George Donner has presented a petition soliciting for the grant of a title to a lot of ground as therein described; therefore I, the undersigned alcalde, do hereby give, grant, and convey unto the said George Donner, his heirs and assigns forever, lot No. 39, containing 100 varas square, in the vicinity of the town of San Francisco, subject to all the rules and regulations governing in such cases.

"In testimony whereof, I have hereunto set my hand, as alcalde, this nineteenth day of July, A. D. 1847.

"GEORGE HYDE,
"*First Alcalde.*"

This entry was accompanied by proof that the heading ("lot No. 39") and the signature were in the handwriting of Hyde, and the remainder in the handwriting of his clerk.

The admission of this evidence was objected to by the defendant, upon the ground that it was secondary, and no foundation had been laid for its introduction by proof of the loss of the original. The objection was overruled, and an exception taken.

After the testimony was closed, the defendants moved a series of instructions to the jury, some of which were given and others refused. Those refused were as follows:

I. The alcalde was not the proprietor of the municipal lands, and could only grant lots, or portions thereof, by virtue of powers derived from the laws and regulations on the subject; the exercise of that power was limited and restricted by certain conditions which he had

no authority to waive or dispense with; if he undertook to grant the lot, without the payment of the municipal fee, his act was void; so of a grant made to a person legally incapable of performing the conditions.

II. Infants were incapable of binding themselves to perform the conditions upon which grants of municipal lands were made by alcaldes, and were therefore incapable of receiving grants.

III. In case of a grant under a power, the regularity of the whole proceedings are to be made out as a part of the purchaser's title; if irregular, the grantee takes nothing by it. In granting lots of pueblo lands the alcalde acted under a mere power, and the payment of the municipal fee was an indispensable prerequisite to find from the evidence that the fee of twenty-five dollars was paid for the one hundred vara lot in question, the alleged grant was void for the want of power, and your verdict should be for the defendants.

To the refusal of the court to give the foregoing instructions exception was taken.

In addition to the instruction given at the request of the defendants, the court, of its own motion, further instructed the jury as follows:

"If you find from the proofs that George Hyde, on the 19th day of July, 1847, was the acting alcalde of the town of Yerba Buena, now city of San Francisco, and that in his official capacity as such alcalde he made a grant to the plaintiff of the lot in question, and evidenced such grant by entering, recording, and certifying the same over his genuine signature as such alcalde, in a book of entry and records of town grants officially kept at the time in the alcalde's office for that purpose, you may not only presume a previous application by the plaintiff, or some one for him, for such grant, but, in addition, you may presume the same was made and duly delivered, unless the evidence satisfies you to the contrary. In case of such making and delivery, the plaintiff will be entitled to recover. But if you do not find the making and delivery of such grant in the manner before stated, then your verdict will be for the defendants."

To this charge, except what is contained in the last two sentences, the defendants also excepted.

I. Whether the first exception was well taken or not depends upon the rank as evidence assigned by the Mexican law, which was then in force, to the entry in "Book A of original grants."

By the instructions approved by the King of Spain, and made for the purpose of establishing the town of Pitic, in the province of Sonora, and directed to be adopted and followed in establishing other new settlements, promulgated on the 14th of November, 1789, a record of the proceedings of the public functionaries authorized to make grants of town lots to settlers was required to be kept and preserved in the archives of the settlement. Of these instructions the seventeenth section is to the following effect:

"Section 17. The commissioner in whose charge shall be the new settlement and the distribution of lands and town lots, shall make a book or register, in which shall appear the original proceedings (las

diligencias originales) that were taken, which book shall be kept in the archives of the ayuntamiento of the new settlement; and an attestation or certificate of these proceedings shall be given to each settler, which shall explain with brevity, distinctness, and clearness, the extent and boundaries of the building lots and sowing lots which he may have assigned to them respectively; which instrument shall serve them as written evidence of proprietorship for themselves, their children, and descendants, warning them that for this purpose they shall keep it, and that if they were to lose it by some unintentional accident, they may have recourse to the commissioner, or to the ayuntamiento to give them another like copy of the proceedings, which for this purpose shall remain archieved."—(Dwinelle's Colonial History of San Francisco—Addenda, p. 11.)

In view of this language, there can be no doubt as to the mode in which grants of town lots were to be made. The entire proceedings were to be first entered in the official book required to be kept for that purpose, signed and attested in due form by the proper officer. A copy or summary statement of the proceedings as contained in the official book, also duly signed and attested by the proper officer, was then to be given to the grantee as evidence of his title, and in the event of its loss the officer, in whose official custody the book might be at the time, was authorized and required to give him "another like copy" of the original proceedings.

The record so kept became an official and public record of the transactions of the alcaldes in the matter of granting town lots, and, as such, primary evidence of the acts there recited under any system of law with which we are acquainied. Entries in such a book, if made in conformity with the regulations of the 14th of November, 1789, became, under the Mexican law, what is denominated an authentic instrument; that is to say, an instrument which proves itself, and under the common law, an official record. Under both systems such entries have always been esteemed the highest and most satisfactory evidence of the facts which they recite, because they are made by direction of the law, and of public concern, and because they are made under sanction of an oath, or at least of official duty, and made at or about the time the acts which they recite transpired. They are retained in the custody of the functionary or department by which they are required to be kept, and are so retained for the express purpose of making them permanent and primary evidence of the transactions of the government. (1 Greenl. on Ev., sec. 483 et sequens.) Such a record can, under no circumstances, be called secondary or subordinate evidence, for there is and can be, from the very nature of the case, no higher evidence of the facts which it recites. "Book A of original grants," if kept in conformity with law, is not, as evidence, subordinate to the paper which was given to the grantee. The most that can be claimed for the latter is an equality of rank, because it, too, bears the official stamp. If, however, any distinction can be drawn between them on the score of rank, the higher degree must be accorded to the record, because it contains the first and most formal and complete instrument, denom-

inated in Mexican law the "matrix," so called because it is the original from which copies may be drawn.

This question arose in the case of Gregory *vs.* McPherson, (13 Cal., 570.) It is true that it arose in relation to a grant made by the governor, but we apprehend, for the reasons already suggested, that no distinction can be made between grants of that character and those made by alcaldes. On the score of being official or authentic documents, which is the ground of their admission as evidence, they stand on a level. In that case a certified copy of the grant, signed by the governor and countersigned by the secretary of state, annexed to and forming a part of the expediente, in the archives of the government, was offered in evidence, and one question was, whether the copy in the archives of the government was to be regarded as primary or secondary evidence. Upon this question the court said: "We are at a loss to know upon what ground such a document can be denied the weight of original evidence. It was made and signed and authenticated as a record by public officers in the discharge of public duties. The papers were retained in the custody of appropriate public officers for the purpose of proof—and the highest and most authentic proof—of their own action. The documents receive the stamp—and the most satisfactory stamp—of official authenticity. The signatures are made on it as on the paper sent out by the department. We cannot see why such papers should be called copies, or why, in the scale of proofs, they should stand in any subordinate relation to the paper handed to the grantee. If not counterparts or duplicates, it would seem that the original paper is the record retained by the department as a part of its permanent records."

In Downer *vs.* Smith, (24 Cal., 114,) a book entitled "Book No. 3," being the official record of grants made by the alcaldes of the Puebla de San Jose de Guadalupe, was offered in evidence under the same circumstances and for the same purpose for which "Book A of original grants" was offered in this case, and we held that it was a book of original grants, and therefore entitled to admission as evidence upon that ground, as well as upon the further ground that it was declared to be competent evidence under the provisions of an act to legalize certain records in the recorder's office of the county of Santa Clara, of which "Book No. 3" was one.

That such is the rule does not seem to be seriously con-
125 tested by counsel for appellants, but it is claimed that the official character of "Book A of original grants" is successfully impeached by the testimony in the case in relation to the manner in which it was kept.

We agree with counsel that the testimony shows that the book was not kept in all respects according to the regulations of the 14th of November, 1789. The reason why it was not is doubtless owing to the fact that the alcaldes by whom it was kept, being citizens of the United States, were ignorant of the mode in which it was directed to be kept under the Mexican domination. Hence, guided by their knowledge of our system of private conveyancing and registration, they regarded the book as standing in the same relation to the paper delivered to the grantee in which the register of deeds in the office

of a county recorder stands to the conveyance therein recorded. They did not, therefore, in all cases enter the entire proceedings in the book and authenticate them in the manner intended by the regulations of 1789, but the first or original proceeding, so to speak, were delivered to the grantee, and a copy or brief summary thereof entered in the book, sometimes by the alcalde and sometimes by his clerk.

We agree with counsel that such was the course pursued in the present case, and that such was the general custom of the office from the conquest of the country by our governmment until the Mexican laws was superseded by our own, and the office of alcalde abolished.

In view of this change, how stands the case? Does it follow, as contended by counsel for appellants, that the record of the alcalde has become merely secondary evidence? Upon what principle can such a result be affirmed? It can only be upon the ground that it thereby ceased to be an official record of the transactions which it commemorates. But in that case, unfortunately for the argument, it does not become secondary evidence; on the contrary, in its fall it does not lodge at that point, but drops entirely out of sight. It ceases to be of any value whatever as evidence, and can only serve as a memorandum to refresh the memory of the alcalde or his clerk. The question, then, is—is book A to be regarded as an official record, notwithstanding the innovations of the American alcaldes? If it is, the consequence necessary follows that it is primary evidence, as we have already seen, simply because it is an official record.

As a matter of fact, aside from any rule of law, book A is the record, and the only record which was kept by the alcaldes of San Francisco, after the acquisition of the country by the United States. It is in that sense the foundation of a vast number of titles, and is of vast importance as evidence, if it can be regarded as evidence at all. Under such circumstances, it ought not to be discarded as unofficial, and therefore worthless as evidence, except for the most cogent reasons.

Wherever book A, as it sometimes does, contains a full copy of the paper which was delivered to the grantee, with the genuine signature of the alcalde appended, there can be no good reason for holding that it has not been kept so far substantially in the manner required by the regulations of 1789. The mere fact that the entry may have been made after instead of before the paper which was delivered to the grantee, would not vitiate the record as evidence, for the fact is an immaterial one, and performs no part in establishing the legal character of the entry. It is the fact that the entry is there, over the signature of the proper officer, upon which the authenticity of the entry depends under the regulations of 1789. Wherever, therefore, the entry is of the character under consideration, we think it is official within the intent and meaning of those regulations, and therefore primary evidence of the grant which it recites.

Book A contains another class of entries, which do not contain a full statement of all the proceedings, but a summary of them sufficient to show that an application for a grant was made, and a grant

made, and are made over the genuine signature of the alcalde. The entry in this case belongs to this class. It is attested by the genuine signature of the alcalde, and so far as it goes, is therefore authenticated in the mode prescribed by the regulations of 1789. Shall it be denied the character of an official entry merely because it is not so full as it might have been, or, if you please, ought to have been—especially in view of the importance of it, and the peculiar circumstances through which it falls short of what it ought to have been, and the further fact that it is unaccompanied by any suspicion of fraud? We think not. We think that such entries substantially accomplish the object of the regulations of 1789, in requiring a record book to be kept, and that they ought to be upheld by the courts as official entries within the spirit of those regulations, and therefore primary evidence of the grant to which they refer.

Book A contains still another class of entries which do not have the genuine signature of the alcalde, but to which his name was appended by his clerk. What effect should be given to these entries, it is unnecessary to determine for the purposes of this case. If they can be upheld as official entries, it must be upon the ground that the custom inaugurated by the American alcaldes superseded the rule established in the regulations of 1789, and itself became the rule of official action, and also determined in what mode the record of such action should thereafter be kept. In view of the well established liberality of the Mexican law toward the innovations of custom, it may be that even these entries should be declared official. The mode prescribed by the regulations of 1789 certainly passed into disuse as a matter of fact, and to all intents and purposes became obsolete. The mere manner in which the record has been kept, may not, therefore, in this view, be decisive of its legal character as evidence. Speaking of the power of custom under Mexican law, Justice Bennett, in Von Schmidt *vs.* Huntington (1 Cal., 64), said: "In Mexican jurisprudence, as in that of other countries, custom is sometimes allowed not only to control, limit, modify and interpret the general rules of the system, but even to establish a rule in direct and palpable contravention of the positive written law. It is the teaching of the books that custom may attain the force of law, not only where there is no law to the contrary, but when the effect of it is to overturn the previous law which stands in opposition to it—whence arises the maxim that there may be a custom without law, a custom contrary to law, and a custom according to law."

Some stress is placed by counsel for appellants upon the fact that there is no proof, as they claim, of a delivery of the grant as alleged in the complaint, and we deem it proper to say what we have to say upon that subject in this connection.

We consider the averment in the complaint to the effect that the grant was delivered to the plaintiff's guardian for the use and benefit of the plaintiff as wholly immaterial. What part the question of delivery may play under the mode of doing business which was adopted by American alcaldes, in the case of entries made by their clerks and canceled entries, we need not now undertake to say. We

hold that the grant in this case was made in a manner not fatally repugnant to the regulations of 1789. Under those regulations there could be no delivery of the grant as entered in book A. The only thing to be delivered was a copy, or if you please, an alias original, which was not given to the grantee in the sense in which we speak of the delivery of a private conveyance. It was not delivered to him because its delivery was necessary in order to give effect to the grant and vest in him the title to the lot. It was given to him merely in testimony of his right under the grant. We do not understand that the doctrine of delivery as applied by us to private conveyances has any application to grants made by the government, either under the Mexican system or our own. We so intimated in Downer *vs.* Smith supra. We understand that the title under the grant vests the moment it has received the stamp of the last act required to completely authenticate the instrument, and that a delivery is not necessary. (Marbury *vs.* Madison, 1 Cranch, 137; Lott *vs.* Budhomme, 3 Rol. La R., 293; Lavergne's heirs *vs.* Elkin's heirs, 17 La R. 226.)

Suppose, from any cause, after the entry in proper form of the proceedings in the book kept by the alcalde, he should fail to deliver the paper to which the grantee is entitled under the regulations of 1789, could it be claimed, with any show of reason, that thereby the grant was defeated or made inoperative or void? We think not. If not, it follows that no delivery of such a paper need be shown.

In Lott *vs.* Prudhomme, supra, a patent was issued by the General Land Office, and sent to the register of the land office in Louisiana. Subsequently the Commissioner of the General Land Office directed the register not to deliver the patent, and it was accordingly withheld. Nevertheless, the patentee brought ejectment upon it, and on the foregoing state of facts the Supreme Court of Louisiana (Bullar, J.) said: "Even admitting the right of the Commissioner of the General Land Office to cancel an entry and sale of public lands before the issuing of the patent, yet the moment the patent has passed the great seal it is beyond the power of the officers of the government. It is true the instrument in this case had been withheld, but we conceive that mere possession of the parchment does not affect the right of the patentee." So it was held that a delivery of the patent was not necessary in order to vest the title in the patentee.

To the like effect is the case of Lavergne's heirs *vs.* Elkin's heirs, supra. In proof of title the plaintiffs produced the books of Spanish grants from the land office in New Orleans, in which was recorded a grant to their ancestors by the governor of Louisiana. The grant was unsigned, yet the court held it to be sufficient evidence of title in the plaintiffs. The cases of Enfield *vs.* Permit (8 N. H., 512) and the proprietors of Enfield *vs.* Day (11 N. H., 520) are also to the like effect.

The claim of the appellants that the points which we have thus far considered, have been determined in their favor by Rice *vs.* Cunningham (29 Cal., 492) is without any substantial foundation. In

that case, the foregoing points were neither argued nor made. The entry of the Kittleman grant, in book A, was not signed by the alcalde in his own handwriting, but in the handwriting of Dunleavy, his clerk. For this reason, or some other, counsel for the plaintiff elected to treat the entry as only secondary evidence. To this view, counsel on the other side, could have no objection. Accordingly a foundation was laid for its introduction as secondary evidence, and it was offered as such. Under these circumstances, it became a matter of no moment whether it came in as primary or secondary. Over that question there was no contest. Upon that branch of the case, the controversy was confined to the question whether the plaintiff was bound to exhibit the entry to the jury as it appeared in the book. The entry had been canceled by lines drawn across the body of the entry and the words "not taken" written in the margin. Counsel for the plaintiff claimed that they were entitled to use the entry without the marks and words of cancelation, alleging that they had been put there in fraud of the plaintiff's rights, while the contrary was contended for by the other side. It was therefore entirely unnecessary for the purposes of the case, that we should adopt a different theory. The real points of controversy could be settled upon the theory adopted by counsel, as well as upon any
126 other. So we followed the lead of counsel, and assumed for the purposes of our opinion, as they had for the purposes of the trial, that the entry in book A was only secondary evidence of the grant upon which the plaintiff relied for a recovery. The only ground for saying that the case in point is as here represented—a mere inference that so and so is the case, because it is so assumed for the sake of the argument. Neither courts nor counsel are bound by conditions which are merely assumed arguendo. To have gone outside of the case as presented by counsel, and discuss a point not at all necessary to the purpose, would have been to erect a windmill merely for the purpose of running a tilt against it, for nothing could have been said upon the question which would not have been strictly obiter.

To avoid any misapprehension, we deem it proper to repeat in conclusion, that what we have hereto said upon the question of delivery, is intended to apply only to such grants contained in "Book A," and not canceled, as are signed in the handwritting of the alcalde, and are therefore, as we hold, authenticated substantially in the mode prescribed by the regulations of 1789. Where the entries in "Book A," are not so authenticated, and do not therefore rest upon the regulations of 1789 for their authenticity and legal character as evidence, but upon the custom which was inaugurated by the American alcaldes, the question whether there has been a delivery or not, may be material, for under that custom, a delivery seems to have been deemed requisite. On that question, however, it is necessary for the purposes of this case, to express an opinion, for, as already stated, we hold that the entry in this case was made substantially in accordance with the regulations of 1789. Where such is the case, there can be no occasion to inquire whether there was a subsequent custom essentially different, or how, if so, the case stands affected.

Such a custom is of importance only where the entry is not signed in the handwriting of the alcalde, or has been canceled, as in Kittleman's case, and doubtless in such cases the new custom must furnish the rule of decision.

II. The only points made upon the exceptions to the instructions of the court, not in effect already noticed, relate to the municipal tax and the infancy of the plaintiff at the time the grant was made.

(*a*) It has never been held, so far as we are advised, that the payment of the municipal tax by the grantee was a condition precedent to the exercise of the granting power. No such condition is imposed by the regulations of 1789, nor by any other to which our attention has been called. The grant was intended to be a gift, and not a sale, made for the purpose of encouraging new settlements. The money paid to the grantee was a tax or fee, and not a price for the lot. The power was long exercised, so far as we are advised, before the tax was imposed, and when it was imposed, we do not understand that it was intended to restrict in any sense the granting power as it had previously existed, but merely to authorize the ayuntamientos to make a charge for the grant in the nature of a fee or tax for the purpose of municipal revenue, not differing in any respect from other municipal fees or taxes. The tax was not heard of till nearly half a century after the plan of Pitic was promulgated. It is first mentioned in the decree of Governor Figueroa, of the 6th of August, 1834, (Dwinelle's Colonial History of San Francisco—addenda, page 29,) which is entitled "A plan of ways and means to raise municipal funds for the ayuntamientos of the Territory of Upper California." In keeping with its title, the decree proceeds to establish a system of taxation, and provides what shall be taxed and how much. The third on the list is "Concessions for buildings lots," and the ayuntamientos are instructed to tax each concession a certain amount, according to the size of the lot. By the fourth item, the ayuntamientos are authorized to charge a dollar and a half for the use of such branding irons as might be filed for registration, and collect the same at the time of registration. By the sixth item, they are authorized to charge the owner half a real for each head of cattle or sheep, and two reals for each hog or pig slaughtered for the public supply or market. So on to the end.

Now, suppose the officer whose business it was to register the branding irons should fail to collect the fee or tax, would the registry thereby become null and void for the uses and purposes, whatever they may have been, for which it was intended? Or suppose an owner of cattle, sheep or hogs should slaughter one of them for the public supply or market, without first having paid the tax, would the steer, sheep or hog, as the case might be, if sold to customers, be any the less their meat?

In many counties of this State, the county officials are paid salaries for their services, but are required to charge certain fees and pay the same over to the county treasurer for the use of the government. Now suppose a recorder should record a deed without charging and

collecting the fee therefor, would the record thereby become as if it were not, and fail to impart constructive notice to subsequent purchasers and incumbrances? Or suppose the clerk should enter cause upon the docket, without having collected the docket tax levied for the purpose of paying in part the judge's salary, would the action become no action, and the judgment, whatever it might be, void and of no account for any purpose? We apprehend not. No distinction can be made between the case in hand and those referred to in illustration. They stand upon the same level, and the payment of the tax or fee for the concession of a house lot, is no more a condition precedent, than the payment of either of the others, and its non-payment did not operate to defeat the grant.

That such was the understanding of the Mexican officials, before the conquest of the country by the United States, is shown by a reference to the schedule of grants made by the municipal authorities of San Francisco, between the years 1835 and 1846, and the accounts of Fuller, syndic of San Francisco, between the years 1839 and 1842 (Dwinelle's Colonial History—addenda pages 75–113), where it appears that grants were made and the tax collected afterward, the same as in the case of other municipal taxes.

We are satisfied that the payment of a tax was a matter of no consequence, so far as the validity of the grant was concerned, and that the plaintiff was not bound to prove that it was paid, nor were the defendants entitled to prove that it was not.

The only reason urged in support of the proposition that the plaintiff, being an infant, could not take under the grant, is that it was not the policy of the Mexican government to make grants of town lots to infants, because they were incapable in law of taking upon themselves the performance of conditions subsequent.

We do not deem it necessary at this late day to go into a critical examination of what the policy of the Mexican government in this matter was, or whether that policy would or would not have been subserved by making grants of town lots to infants. We know that the Mexican nation did make grants of land to infants in other cases, and we know of no positive prohibition in cases like the present. Concede the incapacity of infants to make binding contracts, it does not follow that they could not or would not perform them. They might perform the conditions themselves or others might. The only consequence of a non-performance was a possible forfeiture of the estate. Even adults were not bound to perform them in the sense that they could be made to do so. It was a matter resting entirely with themselves whether they would improve the lot or not. They might or might not; and so might an infant. If not, the government has its remedy by denouncement, in the latter case as well as the former.

III. There is nothing which entitles the defendants to a new trial in the affidavits filed in support of the motion. So far as the facts sworn to by Bryant are concerned, we have assumed them to be true, and in the case for the purposes of our judgment.

The facts sworn to by Palmer, for the purpose of showing surprise, if such were the object, do not accomplish that result.

Judgment and order denying a new trial affirmed.

SANDERSON, J.

We concur: RHODES, J.

CURREY, C. J.

Mr. Justice Shafter, being disqualified, did not participate.

I agree with Justice Sanderson, in holding that the entry in "Book A of original grants" is primary and not secondary evidence, in the sense of the rule relating to the subject. It is not a copy, and does not purport to be a copy, of any act or instrument between private parties, but is an official record of the acts of a public officer—of his own acts—made by him in the performance of his ordinary public duties. It is as clearly a record as the book of account kept under the direction of the same officer, held to be admissible in evidence in Kyburg *vs.* Perkins. (6 Cal., 674) The fact that the alcalde, in making grants, also issued and delivered to the grantee a more formal instrument, which was regarded as the grant, does not affect the character as original evidence of official entries, like the one in question. But, in my judgment, for the purposes of this decision, it is not necessary to hold, and I am not prepared to take the extreme view, that the entry in the question is the grant, and that as such, by virtue thereof, the title vested the moment the entry was completed and signed in the book, without delivery of any document to the grantee, or further act on his part or on the part of the alcalde. If it were necessary to so hold, I should be compelled to dissent from the judgment. It is very clear to my mind, from an inspection of the entry in question, and the other entries in the book, that it was not kept in the mode prescribed by the instructions of the king of Spain, of November 14th, 1789, usually known as the "Plan of Pitic." It clearly appears by the evidence in this case, as it has also appeared in many other cases before brought to this court, that from the time of the conquest, the alcaldes of San Francisco, who were appointed under the authority of the government of the United States, in practice adopted and followed a system which very materially modified the practice before existing, if that practice was in accordance with the "Plan of Pitic." This undoubtedly resulted from the fact, that these officers and the inhabitants who immediately flocked in, and displaced or overwhelmed the old population, had been educated under an entirely different system, with different ideas, and were wholly ignorant of the system of the civil law, which system, in its details, was not merely not comprehended by the new-comers, but was almost incomprehensible to them. This departure from the Mexican law, was not merely the mistake of an individual, but of a whole community, and it was not confined to the making of grants by alcaldes, but it extended to conveyances and many other transactions. The new inhabitants doubtless followed the Mexican usage, so far as they understood it, and substituted their own ideas where they did not. The idea entertained by the alcades appointed subsequent to the conquest was, that not merely a registry,

of the fact of a grant having been made, but a delivery of a formal grant to the grantee was necessary to constitute a grant and vest a
127 title. They never for a moment supposed a grant took effect till the actual delivery. And their practice from the beginning was in accordance with this idea. The practice for a time was, when a grant was applied for, to make out the grant, sign it, make the entries upon the register, and deliver it to the syndic to collect the fees, and upon their payment deliver the grant to the grantee. In case the petitioner declined to take it, or refused or neglected to pay the fees, the grant was destroyed, and the entry in book A canceled. In the practice adopted and pursued, it was not at any period since the conquest intended by the alcalde making the grant, that the grant should take effect until the delivery, nor was it supposed by them or by the parties applying that it did take effect, or that the transaction was complete till payment of the fees and actual delivery. The proceeding was intended to be, and was regarded by all parties, officers and people as in fiere, and under the control of the alcalde till payment and delivery; in other words, that there was no grant till the final act of delivery. The testimony shows that this was the practice, and that there are numerous instances of the cancelation by the alcaldes of the entries of non-delivered grants, and the destruction of the instruments prepared for delivery, which had not been paid for and taken by the applicants. At times the alcaldes would give public notice that grants thus prepared and entered must be taken out and the fees paid before a designated day or they would be canceled, and the cancelation took place in pursuance of these notices. There were some thirty or forty of these entries having the signature of Hyde's predecessor—the grants corresponding to these entries having been turned over to Hyde by his predecessor—canceled by him in this manner. And all this was done in pursuance of the intentions and practice of the alcaldes, and the understanding of the people, that a grant would not become effectual or vest any title till a delivery. Subsequent grants of the same lots to other parties were made upon the idea that the title still remained in the pueblo, and a large number of these lots, situate in the heart of the city of San Francisco, of the present value, doubtless, of several millions of dollars, are now held under such subsequent grants. If a title is once vested by virtue of the entry and signature of the alcalde, I do not perceive how it could be diverted by a mere subsequent cancelation of the entry. To hold that a title, vested the moment the entry was made and signed in "Book A," without a delivery, when such a result was not intended or contemplated by the granting power or the parties interested under the practice adopted, would be to overturn all these subsequent grants, and give the property in its present condition of enhanced value, resulting from twenty years' improvement and expansion of the city, to parties who never themselves claimed or supposed, or were ever supposed by anybody else, to have any title whatever. Nothing short of a positive law, clearly shown beyond reasonable doubt to be in full force, should be permitted to work such results. Conceding the effect claimed for a

record of a grant made and intended to be made in strict accordance with the "Plan of Pitic," we have seen that this record and the practice under which it was made were not in accordance with that plan. The Mexican law yielded much more readily to the force of practice and custom than the common law. "In Mexican jurisprudence, as in that of other countries, custom is sometimes allowed not only to control, limit, modify, and interpret the general rules of the system, but even to establish a rule in direct and palpable contravention of the positive written law. It is the teaching of the books that custom may attain the force of law, not only where there is no law to the contrary, but when the effect of it is to overturn the previous law which stands in opposition to it—whence arises the maxim that there may be a custom without law, a custom contrary to law, and a custom according to law." (Escriche, Derecho Espanol, 23, 24; Escriche, Dic. Title 'Costumbre;' 1 Feb. Mej. 55 to 61; Von Schmidt *vs.* Huntington, 1 Cal., 64; Panaud *vs.* Jones, ib., 488; Castro *vs.* Castro, 6 Cal., 160–61; Tevis *vs.* Pitcher, 10 Cal., 447.) I think it clearly appears in the case that there was a practice inaugurated in respect to the mode of granting and registering grants of lots in San Francisco different from that contemplated in the "Plan of Pitic," as early at least as the administration of the first alcalde appointed under the authority of the United States, under which a grant was not deemed completed, so far as to vest a title in the grantee, till its delivery; and that this plan was thenceforward acted upon, and that it has been regarded as valid from that day to this. Undoubtedly, in point of fact, all subsequent grants down to and including the numerous grants made in pursuance of auction sales under alcalde Geary went upon this theory—that is to say, the entire real estate of the city of San Francisco held under alcalde grants, except the very few concessions made before the conquest, if any such exceptions there be, were granted under the practice and under the idea that the grant did not take effect until a delivery. At all events, upon the case disclosed by the record, we are not authorized to say that a valid custom to this effect had not so far grown up as to have the force of law. In Rice *vs.* Cunningham the case was tried on the theory that a delivery was necessary to constitute a grant. This was the real question litigated in the court below, and the court so charged the jury; and the charge in this respect was not questioned on appeal. It is true that the entry of the grant in "Book A," in that case, was made by the clerk as was sometimes the case, and not signed by the alcalde on the record, although his signature was copied into the record by the clerk. But this was the only record there was, and the the question litigated was the delivery. I am not aware that it has been ever before seriously contended that the title vested under alcalde grants in San Francisco, from the moment the entry in "Book A" was made and signed by the alcalde, and before the delivery of the formal grant, of which a copy or synopsis, as the case might be, constituted the entry. The case of Downer *vs.* Smith was decided upon a different state of facts, and different practice, which seems to have prevailed at San Jose, which was recog-

nized and aided by statuary provisions. It has no application to this case. With all deference to the opinion of my brother Sanderson, founded, as it is, upon a very careful and thorough examination of the question, I cannot concur in the view that this grant was substantially made and registered in pursuance of the "Plan of Pitic," or that it became a grant and vested a title as soon as the entry was made and signed by the alcalde in "Book A." without the delivery of a corresponding title. Under the views I entertain, it is unnecessary to determine this question; but I do not feel at liberty, without indicating my dissent, to permit the announcement of a conclusion, which, in my opinion, tends to a confiscation of, or at least to unsettle the titles to a large portion of the real estate in the city of San Francisco.

But the conclusion to which my mind is forced on the point discussed does not militate against the character of "Book A of original grants" as evidence. It was still a public record of the official acts of the alcalde. It recorded the fact that he had, as alcalde, made a grant. It was a record of his own official action, over his own signature. It was not a copy of the act of some other party. It was primary evidence or no evidence at all. I think it properly admitted.

For the purpose of this decision I assume, as the district judge did on the trial below, that under the practice pursued at the time, a delivery was necessary to consstitute a grant and pass a title. The entry in book A, as we have already seen, was properly admitted. The evidence, I think, was sufficient to justify the submission of the case to the jury. The remaining questions arise on the instructions given and refused. At the request of the defendant the court instructed the jury as follows: "Unless, therefore, you are satisfied from the evidence before you that the grant was by the alcalde executed and delivered to the plaintiff, or to some one for him, you should find for the defendant." And again the court of its own motion gave the following instruction: "If you find from the proofs that George Hyde, on the 19th day of July, 1847, was the acting alcalde of the town of Yerba Buena, now city of San Francisco, and that in his official capacity as such alcalde he made a grant to the plaintiff of the lot in question, and evidenced said grant by entering, recording and certifying the same over his genuine signature as such alcalde, in a book of entries and records of town grants, officially kept at the time in the alcalde's office for that purpose, you may not only presume a previous application by the plaintiff, or some one for him, for such grant, but in addition, further, you may presume the same was made and duly delivered, unless the evidence satisfies you to the contrary. In case of such making and delivery, the plaintiff will be entitled to recover. But if you do not find the making and delivery of such grants in manner before stated, then your verdict will be for the defendant.'

The part of the charge complained of is that portion which, upon the facts assumed, says an application may be presumed, and that "'you may presume the same (the grant) was made and duly delivered,

unless the evidence satisfies you to the contrary." There was a clean entry in "Book A of original grants," signed by the alcalde in person, showing that he had made a grant. It was without any marks of cancellation upon it. This, although, as I think, it did not constitute the grant itself, was an official record of the fact that a grant had been made. There was evidence showing a practice of canceling those entries made before the delivery of the grant where the grant was for any reason, as non-payment of fees, not delivered. This was not canceled in accordance with such practice, but the record was passed over by the alcalde making the entry to his successor, and finally transferred to the recorder's office under subsequent statutes of the State of California, as an authentic final public record of grants made. The instruction was given with reference to the testimony in the case, and I think, unless there was other testimony to rebut the presumption, the jury were justified in presuming the record in the state in which it was presented to be a correct, complete and final record of the acts of the alcalde with reference to this lot, and that the grant had been delivered. There was other evidence given tending both to overthrow and support the presumption. There was the evidence of Alcalde Hyde himself as to his recollection and practice—evidence on the question of payment of fees as bearing upon the question of probable delivery or non-delivery of this grant; and in this connection the evidence with reference to the payment of fees was, in my view, admissible. This evidence with reference to the delivery was submitted by the court upon the question of delivery when the jury were told that they might presume a delivery from the facts assumed, if found proved, unless the evidence satisfied them to the contrary. And an immediate connection with this instruction the jury were again told that if they did not find a making and delivery of the grant, they must find for defendants. Some criticism has been made by counsel for appellants upon the language of the instruction, tending to show, that upon a critical analysis it is obscure and would tend to mislead the jury. I do not think the jury could have misapprehended the idea designed to be conveyed, or that the charge, as it would necessarily be understood, is erroneous. Perhaps something might have been properly and advantageously said upon the bearing of the other evidence on the question of delivery, but no instruction upon this part of the testimony was asked. Although I have not attained this conclusion without some hesitation, I think there was an error in the instruction given.

The instruction asked by defendants and not given were properly refused for reasons stated in the leading opinion.

I concur in the judgment of affirmance.

SAWYER, J.

128 In the Supreme Court of the State of California.

GEORGE DONNER, resp'd't,
vs.
CYRUS PALMER *et al.*, appel. } January term, 1867.

On appeal from the District Court of twelfth judicial district in and for the city and county of San Francisco.

And now, at this day, this cause being called, and having been heretofore submitted and taken under advisement by the court, and all and singular the law and premises being by the court here seen, heard, understood and fully considered, the opinion of the court herein is delivered by Sanderson, J. & Curry, C. J., Rhodes and Sawyer, Js., concurring to the effect that the judgment and order of the court below denying a new trial be affirmed.

Whereupon, it is now considered, ordered, adjudged and decreed by the court here, that the judgment and order of the District Court of the twelfth judicial district in and for the city and county of San Francisco, in the above-entitled cause, be and the same is hereby affirmed with costs.

129 I, William G. Wood, Clerk of the Supreme Court of the State of California, do hereby certify that the foregoing is a true copy of an original judgment entered in the above-entitled cause, on the fifteenth day of January, A. D. 1867, and now remaining of record in my office.

Witness my hand and the seal of the court, this eighth day of November, A. D. 1867.

[SEAL.] WM. G. WOOD, *Cl'k*

130 STATE OF CALIFORNIA:

I, William G. Wood, Clerk of the Supreme Court, do hereby certify that the preceding and annexed are the original writ of error in a suit, in which Cyrus Palmer and others are plaintiffs in error to the Supreme Court of the United States, and George Donner is def't in error; copy of copy of said writ lodged in my office for said defendant in error with its endorsement; original citation with sheriffs return; certificate that bond was filed on appeal, &c.; transcript on appeal to this court; opinion of the judges, together with the judgment rendered thereon in the case of Donner *vs.* Palmer *et al.*

Witness my hand and the seal of the court, this 8th day of November, A. D. 1867.

[SEAL.] WM. G. WOOD,
Cl'k Sup'e C't, Cal'a.

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